TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 88.

GABRIELA SOBERANES DE CAMBUSTON, EXECUTRIX OF HENRY CAMBUSTON, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED JULY 26, 1878.

Francis Lee
v.
Nebraska
1877
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1 Transcript of the proceedings in case No. 511, Henry Cambuston, claimant, vs. The United States, defendant. For the place named, eleven square leagues of land.

2 *Index to proceedings before the board of land commissioners.*

Office of the board of land commissioners to ascertain and settle the private land-claims in the State of California.

Be it remembered that on this fourteenth day of January, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Henry Cambuston for eleven square leagues of land was presented and ordered to be filed and docketed with No. 511, and is as follows, to wit:
(Vide page of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *September* 27, 1853.

In case No. 511, Henry Cambuston, for 11 leagues in Butte County, the deposition of Manuel Diaz, a witness in behalf of the claimant, taken before Com'r Alpheus Felch, was filed.
(Vide page of this transcript.)

3 SAN FRANCISCO, *November* 3, 1853.

In the same case, the deposition of Victor Prudon, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.
(Vide page of this transcript.)

SAN FRANCISCO, *November* 5, 1853.

In the same case, the deposition of P. B. Reading, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.
(Vide page of this transcript.)

SAN FRANCISCO, *December* 5, 1854.

Case No. 511 was caused to be placed at the foot of the 3d-class cases on the trial-docket.

SAN FRANCISCO, *March* 19, 1855.

In the same case, the deposition of James L. Ord, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.
(Vide page of this transcript.)

SAN FRANCISCO, *March* 20, 1855.

...e No. 511 was submitted on briefs and taken under advisement by ...rd.

4 In the same case the deposition of Elisha C. Crosby, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.
(Vide page of this transcript.)

SAN FRANCISCO, *March* 27, 1855.

In the same case, the deposition of Jacob Antonio Morenhaut and Manuel Castro, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, was filed.
(Vide page of this transcript.)

SAN FRANCISCO, *July* 10, 1855.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board, confirming the claim.
(Vide page of this transcript.)
And the following order was made, to wit:
(Vide page of this transcript.)

5 *Petition.*

To the honorable commissioners to settle private land-claims in California:

The petition of Henry Cambuston respectfully shows:
That on the 23rd day of May, A. D. 1846, Pio Pico, constitutional governor of California, granted to your petitioner a tract of land situate in the present county of Butte, containing eleven square leagues of land, more or less, with the boundaries set down in the title and respective map, all of which is shown in the espediente and title, a copy of which title so issued by said Pico is herewith submitted, marked "A," with a translation, marked "B."
Your petitioner further shows that the said tract of land has not been surveyed by the surveyor-general of the United States, but that the boundaries are fully described in the grant, and are well known.
That immediately after the issuing of the grant aforesaid, in the beginning of the summer of the year 1846, your petitioner entered upon and took possession of said tract of land; that he erected a house thereon, and put about fifty head of young cattle upon said land, leaving an agent to take care of them.

6 That some time thereafter, the Indians becoming troublesome and hostile, and the war with the United States of America *have* broke out, his agent became alarmed and fled from the premises, and his stock of cattle were a total loss to him.
Your petitioner further says that he knows of no conflicting claim; that he relies for confirmation of his title upon the original documents aforesaid, upon the records and minutes in the archives now under the charge of the surveyor-general, and upon such further proofs as he may be advised are necessary.
Wherefore he prays the commissioners to confirm to him the aforesaid tract of land.

CHARLES GILMAN,
Att'y for Petitioner.

Filed in office Jan'y 14, 1853.
(Signed) GEO. FISHER, S[illegible]

7 *Deposition of Manual Diaz.*

Office of board of U. S. commissioners to, &c.

This day, before Com'r Alpheus Felch, came MANUEL DIAZ, a witness in behalf of claimant, Henry Cambuston, No. 511, who, after being duly sworn, deposed as follows:

Questions by M'r Gilman, attorney for the claimant:

1st question. What are your name, age, and place of residence?

Answer. My name is Manuel Diaz; my age is forty-one years, and I reside at Monterey, in California.

2nd question. Are you acquainted with Henry Cambuston, the claimant in this case?

Answer. I am.

3rd question. Do you know the land owned by M'r Cambuston in the Sacramento Valley? If so, state what you know of the locality of it, and of the occupation by him, and of the improvements made on the premises.

8 Answer. I know the land. I have been there once. It was in August or September, 1848. It is situated about fifteen leagues from Fort Sutter, on Sacramento River, and is near the Three Buttes.

In 1847 I sold Mr. Cambuston fifty head of cattle which I delivered on his order at my place in Monterey County. Mr. Cambuston told me they were to be taken to his rancho before mentioned, and his servant who came for the cattle said they were going to take them.

When I was there in 1848 I saw a small house and a corral on the place; there were also some cattle and some horses on it. I do not know their number. Pedro Garcia was on the place at that time and was the only civilized man there. There were also some two or three Indians on it.

4th question. Do you know whether Garcia was occupying the land for himself or under Cambuston?

Answer. He occupied it as the servant of Mr. Cambuston.

5th question. Do you know whether the Three Buttes are on the dividing line between the land of Cambuston and Sutter?

9 Answer. Mr. Cambuston told me at the time I was there that they were, but I do not know anything of my own knowledge about it. I never saw any title-papers.

MAN'L DIAZ.

Mr. Greenbow, associate law agent, attended to the taking of this deposition, but propounded no questions to the witness.

The testimony was given in the Spanish language, M'r Fisher acting as interpreter.

Subscribed and sworn to before me this twenty-sixth day of September, 1853.

ALPHEUS FELCH,
Commissioner.

Filed in office September 27, 1853.
(Signed) GEO. FISHER, *Sec'y.*

10 *Deposition of Victor Prudon.*

Office of the board of commissioners, &c., &c.

This day, before Com'r R. Aug. Thompson, came VICTOR PRUDON, a witness in behalf of Henry Cambuston, No. 511, who, after being duly sworn, deposed as follows:

Testimony on behalf of claimant.

Present, A. Navarro for claimant, and R. Greenbow, esq., ass't law agent.

Witness states his name to be Victor Prudon, age forty-four years, residence San Francisco.

Question by claimant's counsel. Are you acquainted with the land claimed in this case called Los Picos? If so, state if you know when it was first occupied and the character of the occupation and improvements thereon, and when the latter were made.

Answer. I know the rancho. I was there in 1846. I do not know when it was first occupied. When I was there in October, 1846, the claimant, Henry Cambuston, was living on it. He had a small house there,

11 some land enclosed and in cultivation; a small stock of cattle, &c. I also saw a few Indian laborers and one white man, a major-domo or manager. There were six or eight hundred varas in cultivation and some corrals. I was informed by the claimant that the rancho contained eleven leagues.

V'R PRUDON.

Sworn to and subscribed before me Nov. 3, 1853.

(Signed) R. AUG. THOMPSON.

Filed in office Nov. 3, 1853.

(Signed) GEO. FISHER,
Sec'y.

Deposition of P. B. Reading.

Case No. 511. Henry Cambuston. Office of the board of commissioners, &c.

This day, before Commissioner R. Aug. Thompson, came P. B. READING, a witness in behalf of Henry Cambuston, No. 511, who, after being duly sworn, deposed as follows:

Testimony in behalf of the claimant.

Present, V. E. Howard, esq., att'y for claimant.

Witness states his name to be Pearson B. Reading, his age

12 thirty-six, and residence Shasta County, Cal.

Question by claimant's att'y. State, if you know, the northern boundary of New Helvetia or Sutter's ranch, and describe it.

Answer. I know what is reported to be the northern boundary of said ranch. It runs east and west from the Sacramento River above the Three Buttes or Peaks to Feather River, and is about fifteen miles in length.

Question by same. What is the direction along that line from the Sacramento River to Flugge's ranch or land?

Answer. I am not acquainted with the western boundary of Flugge's ranch. Said ranch is situated on the western side of Feather River considerably above the northern line of New Helvetia, and runs b[illegible]

the direction of the Sacramento with said line, but I do not know what
tance.

Question by same. What do you understand to be the southern bound-
of Henry Cambuston's land?

Answer. I have always understood it to be the northern line of
13 New Helvetia or Sutter's ranch.

P. B. READING.

Sworn to and subscribed before me Nov. 5, 1853.

R. AUG. THOMPSON,
Com'r.

It is agreed by the U. S. ass't law agent that this deposition may be read in No. 92, case of J. A. Sutter.

R. AUG. THOMPSON, *Com'r.*

Filed in office Nov. 5, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. L. Ord.

United States land commission, San Francisco, March 17, 1855.

On this day, before Commissioner R. Aug. Thompson, came JAMES L. ORD, a witness in behalf of the claimant, Henry Cambuston, in case No. 511, who, after being duly sworn, deposed as follows:

Present, claimant's att'y, and United States law agent.

In answer to question witness states his name is James L. Ord,
14 his age thirty-one years, and residence Monterey, California.

1st question by claimant's counsel. Are you acquainted with the lands claimed in this case by Henry Cambuston for eleven leagues in Butte County?

Answer. I am aquainted with said lands.

2d question by same. How or in what manner did you become acquainted with the same?

Answer. I have seen the lands, and I think I have been on them. I acted as agent for the sale of an adjoining tract.

3rd question by same. About how much land is contained within the following boundaries: On the north by Don Antonio Osio, on the south by Capt. Sutter, on the east by M'r Flugge, and on the southwest by the Sacramento River?

Answer. I cannot say definitely, my attention not having been drawn when in that section of country to this particular tract. The character of the country in which this land is situated is a broad plain. I
15 am acquainted with the boundaries of the ranchos named in the question from being conversant with the grants, and I should suppose the land comprised within the limits referred to would be from five to ten leagues.

1st question by the U. S. law agent. Where do you locate the line of Sutter's rancho in estimating the quantity of land?

Answer. About fifteen miles northwest of the Buttes.

2d question by same. What enables you to locate Sutter's line at that point?

Answer. From having seen a map of a recent survey of that section of country in the surveyor-general's office.

3d question by same. What was there on said map which enables you to locate said boundary?

Answer. The township lines, and, I think, Sutter's northern line was also marked on said map.

4th question by same. Do you know upon what data Sutter's
16 northern line was marked on said map, and is that your only means of knowledge of the location of said line?

Answer. I presume it was from the calls of Sutter's grant making a certain degree of latitude the northern boundary, but I do not know of my own knowledge. I have also read the original grant of Sutter.

5th question by same. What was Sutter's northern boundary, according to the calls of said grant?

Answer. The Buttes were called for, and a certain degree of latitude, but I do not recollect precisely what degree.

6th question by same. What was the course and distance of Sutter's northern line, upon which your estimate of quantity is based?

Answer. The course was about east and west, running from the Sacramento to Feather River, a distance of perhaps five or six leagues.

7th question by same. In making your said estimate of quantity, where and upon what data do you locate the line of Osio's ranch?

17 Answer. I had charge of Osio's radch. The boundaries are very indefinite, and include more land than is called for in the grant. I calculated from the calls of the grant and the general character of the country about where the line would run through. I cannot describe its precise position.

8th question by same. In making that calculation how far did you place that line north of the Buttes?

Answer. I cannot state positively, as distances are very deceiving in the plains, but I suppose it to be twenty or twenty-five miles, more or less.

9th question by same. What calls of Osio's grants or other data enabled you to locate that line at that distance from the Buttes?

Answer. From my general impression of the calls of the grant. I have not seen the grant for some time, and my recollection of its calls are indistinct. I know they were indefinite, but I fixed the line
18 there from my knowledge of the country.

10th question by same. What particular facts within your recollection enabled you to fix the line at that point?

Answer. The Buttes, a very prominent object, the Sacramento River, and the foot-hills to the north.

11th question by same. How far is it from the said Buttes to the said foot-hills?

Answer. I think it is about thirty miles, according to my impression formed at the time.

12th question by same. Draw a line east and west through the summit of the Buttes as Capt. Sutter's northern boundary. How much land would be included in this tract according to your estimate?

Answer. The quantity would in my opinion be a good deal more than doubled.

13th question by same. If Sutter's northern boundary was at the southern part of the Buttes?

Answer. I should suppose an east and west line drawn along
19 the southern foot of the Buttes would be a' inch or two further south than a similar one drawn across the summit.

14th question by same. By what data did you arrive at the position of the western line of Flugge's ranch in making your said estimate?

Answer. I know Flugge's ranch was situated on the western bank of

Feather River and estimated a league or two from Feather River as the position of the western line.

JAMES L. LORD.

Sworn to and subscribed before me this 17th of March, 1855.

R. AUG. THOMPSON,
Com'r.

Filed in office March 19, 1855.
(Signed) GEO. FISHER,
Sec'y.

20 *Deposition of E. O. Crosby.*

United States land commission, San Francisco, March 20, 1855.

On this day, before Commissioner Alpheus Felch, came ELISHA O. CROSBY, a witness on behalf of the claimant in case No. 511, who, after being duly sworn, deposes as follows:

Questions by M'r Howard, attorney for claimant:

1st question. Please state your name, age, and place of residence.

Answer. My name is Elisha O. Crosby, my age thirty-eight years, and I reside in Santa Clara County, California.

2d question. Are you acquainted with the signatures of Pio Pico and José Moreno? If yea, state your means of knowledge.

Answer. I am acquainted with the signature of Pio Pico. I have seen him write and have received several business letters from him. I do not know the signature of Moreno.

3d question. Look at the espediente or copy of a grant hereto
21 annexed and marked "Exhibit No. 1," with the initials A. F., and say if you have compared it with the original on file in the surveyor-general's office; and, if yea, is it a true copy? And also whether the signatures of Pico and Moreno, signed to the original, are genuine.

Answer. I have compared it with said original and find this to be a true copy thereof. The signature of said Pico on said original I believe to be his true and genuine signature. I have already stated that I am not acquainted with Moreno's signature.

E. O. CROSBY.

M'r McCune, law agent, attended at the taking of this deposition, but propounded no interrogatories.

Subscribed and sworn to before me this 20th day of March, 1855.

ALPHEUS FELCH,
Commissioner.

Filed in office March 20, 1855.
(Signed) GEO. FISHER, *Sec'y.*

22 *Deposition of J. A. Morenhaut.*

UNITED STATES OF AMERICA, *State of California:*

SAN FRANCISCO, *March* 23, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners, in said State, JACOB ANTONIO MORENHAUT, a witness on behalf of the claimant,

Henry Cambuston, in case No. 511, on the docket of said board, and said witness, being sworn, deposed as follows:

The U. S. law agent is present.

Questions by M'r Howard for claimant:

1st question. What is your name, age, and place of residence?

Answer. Jacob Antonio Morenhaut, aged fifty-seven, my place of residence is at Monterey.

2d question. Look at the place now shown you, being the espediente file in this case, marked "A," and say if you have compared it with any paper on file in the surveyor-general's office, and, if so, what paper?

23 Answer. I have compared it with the original on file in the surveyor-general's office, and this appears to me to be a true copy.

3rd question. When did you first see the original, and when was it deposited in the archives of the surveyor-general?

Answer. The first time I saw the original was in the beginning of 1847, in the possession of M'r Cambuston. I was French consul in Monterey in 1848, when he deposited this title, together with other papers, in my possession. He withdrew it some time in 1849, and told me subsequently that he had deposited the title in the archives of the United States.

4th question. Are you acquainted with the signature of José Matias Moreno, attached to the original grant in this case?

Answer. I never saw him write but once. I have corresponded with him.

5th question. Is his signature attached to said original grant genuine?

24 Answer. So far as I can judge it is his genuine signature.

Cross-examined by U. S. law agent:

1st question. Have you any interest in the event of this suit?

Answer. I am an agent of M'r Cambuston. He promised to give me one-eighth of the land for my labor, but there never has been any deed made to me.

J. A. MORENHAUT.

The law agent objected to the deposition on the ground of the interest of the witness.

Subscribed and sworn to before me on this 23 day of March, A. D. 1855.

PETER LOTT,
Commissioner.

Filed in office March 27, 1855.
(Signed) GEO. FISHER,
Sec'y.

25 *Deposition of Manuel Castro.*

UNITED STATES OF AMERICA, *State of California, ss:*

SAN FRANCISCO, *March* 23, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commission, in said State, MANUEL CASTRO, a witness on behalf of the claimant, Henry Cambuston, in case No. 511, on the docket of said board; and said witness being

sworn, deposed in Spanish, which was interpreted by the interpreter to said board, as follows:

The U. S. law agent is present.

1st question. What is your name, age, and residence?

Answer. My name is Manuel Castro, my age 33 years, and I reside in Monterey, California.

2d question. Look at the espediente in this case, marked "B. P. L.," and hereto annexed, and state whether you have compared the same with its original in the archives at the surveyor-general's office,
26 and whether it is a copy of the original title.

Answer. I have not compared the said espediente "B. P. L." with its original in the archives at the surveyor general's-office, but I have this day seen the original grant of which this is a copy in the office of the surveyor-general, and know that this is an exact copy thereof, because the parties mentioned herein and place and the number of sitios are the same as those cited in the said original which I saw.

3rd question. Are you acquainted with the signatures of Pio Pico and José Matias Moreno? How did you become acquainted with them? and state whether or not you consider the signatures of the said persons where they occur in and upon the said original to be their genuine signatures.

Answer. I do know the signatures of the said Pio Pico and José Matias Moreno, having seen them both write often, and their signatures where they appear on the aforesaid original are the genuine signatures of said persons.

MAN'L CASTRO.

27 Subscribed and sworn to before me on this 23d day of March, A. D. 1855.

PETER LOTT,
Commissioner.

Filed in office March 27, 1855.
(Signed) GEO. FISHER, *Sec'y.*

1. *S. D. K.—Exhibit No.* 1, *A. F. A.—Copy of the grant.*

Pio Pico, gobernador constitucional del departamento de Californios.

[SELLO.] Por cuanto Don Enrique Cambuston, ha pretendido para su beneficio personal un terreno baldio en el Valle del Sacramento colindante al norte con D'n Antonio Osio, al sur con el Señor Sutter, al este con el Señor Flugge y al sudeste con el Rio del Sacramento, practicados previamente las averiquaciones concernientes, segun lo dispuesto y de conformidad con la ley de 18 de Agosto de 1824, y el reglamento de 21 de Noviembre de 1828, he venido en uso de las facultades que
28 me están conferidas á nombre de la nacion mejicana en concederle el terreno espresado que resulte fuerá de los linderos de los colindantes mencionados, declarandóles la propriedad de él por los presentos letros, á reserva de la aprobacion de la ex'ma asamblea departamental y bajo los condiciones siguientes:

1ª Podrá cercarlo sin perjudicar los travecios, caminos y servidumbres, lo disfrutará libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode.

(2 S. D. K.)

Cuando se le confirme la propiedad solicitará del juez respectivo le de la posecion jurídica en virtud de este despacho por el cual se demarcarán los linderos con los mojoneros necesarios.

3ª. El terreno de que se hace donacion es de la estencion de once sitios de ganado mayor si los hubiere fuerá de otros propiedos cuyos limites deberán respetarse, y si los hubiere se conformará la porte agraciada con lo que resultará. El juez que lo posesione lo hará medir conforme á ordinanza dejando el sobrante á la nacion para los usos convenientes.

En consecuencia mando que teniendose por firme y valedero se
29 tome razon de él en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles, en este papel comun, por falta del sellado, á veinte tres de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.

JOSÉ MATIAS MORENO,
Srio. Into.

3.—S. D. K.

Queda tomada razon de este superior despacho en el libro respectivo.

MORENO.

I certify that the foregoing title was deposited in the archives in this office in my charge on the tenth day of July, 1850.

EDW'D CANBY,
Ass't Adj't Gen'l U. S. Army.

ASSIST. ADJ. GEN'L OFFICE, HEADQUART'S MIL. DEPART.,
Monterey, July 13, 1850.

OFFICE OF THE SURVEYOR-GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor-general of the United States for
30 California, and as such now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the preceeding and hereunto annexed pages of tracing paper, numbered one, two, and three, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of a document which is on file and forms part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the eighth day of January, 1853.

SAM'L D. KING, [SEAL.]
Sur'y'r Gen'l, Cal.

Filed in office Jan'y 14th, 1853.

GEO. FISHER, *Sec'y.*

31 *B.—Translation of A.*

Pio Pico, constitutional governor of the department of California:

Whereas M'r Henry Cambuston has petitioned, for his own personal advantage, for a tract of unoccupied land in the valley of the Sacramento, joining on the north to Don Antonio Osio, on the south M'r Sutter, on the east M'r Flugge, and on the southwest the river Sacramento, the investigations being previously made according to the custom and in conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828: in virtue of the powers which have been conferred on me, in the name of the Mexican nation, I

grant the tract of land expressed, lying out of the boundaries of the before-mentioned land-holders, declaring it his estate by the present letters, provided it shall be approved by the extreme departmental assembly, and under the following conditions:

1st. He may, without prejudice to the crossings, roads, or attendances, fence it, enjoying it freely and exclusively, devoting it to any use or cultivation as best may suit his convenience.

32 2nd. When the title shall be confirmed he shall demand of the respective judge judicial possession of it, by virtue of this despatch, by which the boundaries shall be designated with the necessary landmarks.

3rd. The claim of land for which this grant is made has an area of eleven square leagues of pasture, if there is that outside of the property of the others, whose boundaries are to be respected; and if there should not be, the grantee shall be satisfied with that which remains.

The judge who gives possession shall cause it to be surveyed according to the ordinance, leaving the residue for the convenient uses of the nation.

Consequently I command that he hold the present title as true and valid.

It shall be recorded in the respective book, and be delivered to the party interested, for his security and other uses.

Given in the city of Los Angeles, on this common paper for want of sealed, on the 23d day of May, 1846.

(Signed) PIO PICO.
(Signed) JOSÉ MATIOS MORENO.

33 Filed in office Jan'y 14, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Opinion of the board, delivered by Commissioner R. Aug. Thompson.

HENRY CAMBUSTON *vs.* THE UNITED STATES. } No. 511.

This is claim for eleven square leagues of land situated in the valley of the Sacramento, joining *in* the north Don Antonio Osio, *in* the south M'r Sutter, on the east M'r Flugge, and on the southwest the Sacramento River, and purports to be founded on a grant made to the present claimant by Governor Pio Pico on the 23d day of May, 1846.

The original grant is not produced, but it is in proof that it was in the possession of the grantee, and was deposited in the government archives in the year 1850, where it still exists. Its genuineness is fully established by the testimony.

It is also in proof that efforts were made by the grantee to occupy the land within a year after the grant was made, and that in
34 the year 1847 he had a house on the land, occupied by his major domo, a stock of cattle, and a portion of it in cultivation.

The limits within which the location is to be made are established with sufficient certainty to bring the case within the principles settled by the Supreme Court in the case of John C. Fremont.

In accordance with which a decree of confirmation will be entered.

Filed in office July 10, 1855.
(Signed) GEO. FISHER, *Sec'y.*

Decree of confirmation.

HENRY CAMBUSTON
vs.
THE UNITED STATES. } No. 511.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in Butte
35 County, and consists of eleven square leagues, as described and located by the original grant to said claimant, on file among the archives in the custody of the United States surveyor-general for the State of California, a traced copy of which is filed among the papers in the case, and to which reference is hereby made; provided the said quantity of eleven leagues be contained within the boundaries described in said grant; but if not, then this confirmation is for such less quantity as may be so embraced within the aforesaid boundaries.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office July 10, 1855.
(Signed) GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it
36 is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

Office of the board of commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-one pages, numbered from 1 to 31, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which
37 the same is founded, on file in this office, in case No. 511 on the docket of the said board, wherein Henry Cambuston is the claimant against the United States for the place known by the name of "eleven square leagues of land."

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.* [SEAL.]

(Endorsed:) Filed December 1, 1855. J. A. Monroe, clerk.

38 *Notice of appeal.*

OFFICE OF THE ATTORNEY-GENERAL OF THE UNITED STATES,
Washington, 31 *Dec.*, 1855.

511. 11 "square leagues of land." Henry Cambuston, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land-claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney-General.

(Endorsed:) Filed February 11, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

39 *Petition.*

To the honorable district court of the United States in and for the northern district of California.

THE UNITED STATES, APPELLANTS,
vs.
HENRY CAMBUSTON, APPELLEE. } No. 349.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the first day of December, 1855; that a notice of appeal was filed on the first day of February, 1856, and that the land claimed lies in the said district.

That the said claim is invalid.

Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

S. W. JUGE,
U. S Dist. Att'y.

40 (Endorsed:) Filed Feb'ry 25, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Answer.

The United States district court for the northern district of California.
Appeal from the U. S. land commission.

THE U. STATES, APPELLANTS,
vs.
HENRY CAMBUSTON, APPELLEE. } No. 349.

And now comes the said appellee, by his attorney, and, for answer to the petition of appellant, says there is no error in the judgment and

proceedings of the said board of land commissioners in this case, and prays the same may be enquired of by the court.

V. E. HOWARD,
For Appellee.

41 (Endorsed:) Filed Feb'ry 25th, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Decree.

In the United States district court for the northern district of California.

THE UNITED STATES, APPELLANTS,
vs.
HENRY CAMBUSTON, APPELLEE.

Appeal from the United States board of land commissioners for the adjustment of land-titles in the State of California.

The above-stated case, being an appeal from the board of United States land commissioners for the adjustment of land-titles in the State of California, organized under the act of Congress of 3rd March, A. D. 1851, coming on for hearing on the record of said case in said commission, notice of appeal, petition of review, answer filed and issue joined
42 in this court, it appearing to the satisfaction of the court that the land claimed in this case by said appellee is situated in said northern district, and argument of counsel being heard, it is ordered, adjudged, and decreed that said claim is valid, and that the same be confirmed.

It is further ordered, adjudged, and decreed that said claim be confirmed according to the limits in said grant described: Bounded on the north by the lands of Antonio Osio, on the south by the lands of M'r Sutter, on the east by the lands of M'r Flugge, and on the southwest by the river Sacramento, situated in Butler County, Cal.

It is further ordered, adjudged, and decreed that said claim is confirmed to the extent of eleven square leagues, if that quantity shall be found to be contained within the above-described boundaries; and if the same shall contain less than eleven leagues, then for the less quantity which may be contained within said described boundaries.

OGDEN HOFFMAN, J'R,
U. S. Dist. Judge.

Correct:

O. H.

43 (Endorsed:) Filed March 3rd, 1856. John A. Monroe, clerk, by W. H. Chevers, deputy.

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the 24th day of April, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the honorable Ogden Hoffman, j'r, district judge.

THE UNITED STATES, APPELLANTS,
vs.
HENRY CAMBUSTON, APPELLEE. } No. 349.

In this case, on the application of the United States attorney made in open court, it is ordered by the court that an appeal in be-
44 half of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

(Endorsed:) Filed April 24, 1856. J. A. Monroe, clerk, by W. H. Chevers, deputy.

Order directing filing of mandate of U. S. Supreme Court.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
HENRY CAMBUSTON, CLAIMANT. } D. C. 349. L. C. 511.

45 This day came into open court Heydenfeldt, attorney for the claimant, and produced a mandate from the Supreme Court of United States, duly certified.

Whereupon, on motion of said Heydenfeldt, and the district attorney of the United States, P. De La Torre, esq., being present and making no objections thereto,

Ordered, that the aforesaid mandate be received and placed on file; that the parties respectively have leave to take testimony in said cause, and to have such other and further proceedings as may be necessary to bring the same to trial.

OGDEN HOFFMAN,
U. S. Dist. Judge.

(Endorsed:) Filed May 5th, 1859. W. H. Chevers, clerk.

46 *Mandate Supreme Court United States.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the
[SEAL.] judge of the district court of the United States for the northern district of California, greeting:

Whereas lately in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and Henry Cambuston, appellee, the decree of the said district court was in the following words, viz:

"It appearing to the satisfaction of the court that the land claimed in this case by said appellee is situated in said northern district, and argument of counsel being heard, it is ordered, adjudged, and decreed that said claim is valid, and that the same be confirmed.

"It is further ordered, adjudged, and decreed that said claim be confirmed according to the limits in said grant described: Bounded on the north by the land of Antonio Osio, on the south by the lands
47 of M'r Sutter, on the east by the lands of M'r Flugge, and on the southwest by the river Sacramento, situated in Butte County, Cal."

It is further ordered, adjudged, and decreed that said claim is confirmed to the extent of eleven square leagues, if that quantity shall be found to be contained within the above-described boundaries; and if the same shall contain less than eleven leagues, then for the less quantity which may be contained within said described boundaries; as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in
48 this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein in conformity to the opinion of this court and as to law and justice shall appertain.

JAN. 25TH.

You, therefore, are hereby commanded that further proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, Chief-Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed May 5th, 1859. W. H. Chevers, clerk.

49 *Affidavit of Rafael Pinto and stipulation.*

In the United States district court for the northern district of California.

UNITED STATES, APPELLANTS,
vs.
H. CAMBUSTON, APPELLEE.

Rafael Pinto having appeared before me, the undersigned, commissioner of the United States for the district of California, and being first sworn, made oath as follows:

My name is Rafael Pinto. I am forty-one years old, and I reside in the town of Monterey, in the State of California, where I have resided for the last thirty-three years. In the year one thousand eight hundred and forty-six I heard it mentioned and spoken of by various persons that the governor of the department of the Californias, Don Pio Pico, had made a grant of lands to Henry Cambuston, residing at the time in Monterey, which lands were situated on the Sacramento River, and I

am not certain, but am under the impression, the grant was for
50 eleven (11) leagues. I am by occupation a ranchero.

RAFAEL PINTO.

Sworn and subscribed to before me this the 15th day of June, A. D. 1859.

C. SIMS,
United States Commissioner.

The foregoing deposition is admitted, subject to exception on the ground of irrelevancy and incompetency.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

(Endorsed:) Filed Sept. 5, 1859. W. H. Chevers, clerk.

Affidavit of G. de la Torre and stipulation.

In the United States district court for the northern district of California.

UNITED STATES, APPELLANTS,
vs.
H. CAMBUSTON, APPELLEE.

51 Gabriel de la Torre, having appeared before me, the undersigned, commissioner of the United States for the district of California, and being first sworn, made oath as follows:

My name is Gabriel de la Torre. I am fifty-one years old. I was born in the town of Monterey, California, where I have continued to reside to the present time. Some time about the middle of the year 1846 I heard it mentioned and spoken of by various persons that Don Pio Pico, governor of the Californias, had made a grant of land on the Sacramento River to Henry Cambuston, a resident of Monterey. I recollect also to have heard that it was for eleven leagues of land. I am by occupation an agriculturist.

GABRIEL DE LA TORRE.

Sworn and subscribed to before me this 15th day of June, A. D. 1859.

C. SIMS,
United States Commissioner for the State of California.

The foregoing deposition is admitted, subject to exception on the ground of irrelevancy and incompetency.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

(Endorsed:) Filed Sept. 5, 1859. W. H. Chevers, clerk.

52 *Deposition of Juan B. Alvarado, a witness produced on behalf of claimant.*

United States district court, northern district of California.

THE UNITED STATES }
vs.
HENRY CAMBUSTON. }

SAN FRANCISCO, *July* 18, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to admin-

ister oaths, &c., &c., came JUAN B. ALVARADO, a witness produced on behalf of the claimant in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land-claims in the State of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by F. A. Sawyer, a sworn interpreter.

Present, Tully R. Wise, acting U. S. dist. att'y; Volney E. Howard for claimant.

Questions by att'y for claimant:

Ques. 1. Your name, age, and place of residence?

Ans. 1. Juan B. Alvarado. I am 50 years old. I reside in San Pablo, Contra Costa County, California. I was formerly governor of the
53 Californias, and held other offices. I was constitutional governor from 1838 to 1842.

Ques. 2. Are you acquainted with Henry Cambuston; and, if yea, how long have you known him?

Ans. 2. I know and have known him since 1841.

Ques. 3. Is it within your knowledge that M'r Cambuston rendered any services to the Mexican government; and, if yea, what, and when?

Ans. 3. I know that he rendered services to the Mexican government, which were as follows: He was precepter in a seminary of education or school in Monterey, the capital of the county, in 1841. During the whole of that year he filled this office, and likewise filled the same office in 1842. In 1841 he was directed by the government to take charge of their public printing-press. He continued filling this office as teacher and director of the public press up to 1846. This is my impression.

Ques. 4. By whom was he employed to teach this school?

Ans. 4. I myself employed him, as governor. It was a government school.

54 Ques. 5. Was he paid or not by the government for the service of the school and printing, within your knowledge?

Ans. 5. As preceptor, he was paid; as printer, his services were not paid.

Ques. 6. Do you know anything of his having been offered land or a grant of land in payment of what was due him as printer?

Ans. 6. I myself offered him lands in payment for his services as printer and as preceptor also, but M'r Cambuston did not at that time accept my offer, reserving to himself the right of making an application for land at some future time.

Ques. 7. Do you know anything of his obtaining land at some future period in consideration of his services?

Ans. 7. I heard that he obtained a grant of land from one of my successors in office in payment of these services.

Ques. 8. Can you state what was the value of the services rendered the government by M'r Cambuston as printer?

55 Ans. 8. I cannot calculate the value of his services as printer, as that was a branch of business totally unknown in this country; and I do not know how long exactly he discharged the duties of printer, whether it was up to 1846 or not. He was employed from 1841 to 1846, but there might have been intervals when there was nothing to do.

Ques. 9. What was the kind and amount of the printing?

Ans. 9. The printed school-books and things of that class that were necessary for his scholars, likewise the sealed paper used by the government in its official transactions, and such miscellaneous printing as the different offices of the government might require.

Cross-examination:

Ques. 1. When did you cease to be governor of California? Give the year and month.

Ans. 1. I ceased to be governor of California at the end of 1842; I do not recollect the month, but at the end of the year.

Ques. 2. How did this school of which you have spoken become a government school?

56 Ans. 2. As there were no public school', in Monterey, I myself, as governor, established this school as a government school, the expenses of which were to be defrayed out of the national funds.

Ques. 3. Was this public printing connected with the school?

Ans. 3. Only that they were in the same building, but they were distinct the one from the other. The business of preceptor was distinct from that of printer.

Ques. 4. Was the public printer to be paid for as much as he did or by the year?

Ans. 4. I recollect the man who filled this office of printer before Cambuston received a monthly salary. Cambuston undertook the office without any agreement as to salary or pay, expecting to be compensated by government at some future time.

Ques. 5. Was not the principal part of Cambuston's duty as printer to print books for his scholars?

Ans. 5. Yes, it was.

57 Ques. 6. When the government employed Cambuston as teacher, was not his time at the disposal of the government?

Ans. 6. His services as preceptor were. They had no right to occupy him in anything else except as preceptor.

Ques. 7. How much type was in that government office at Monterey?

Ans. 7. I don't know how much there was there. I saw the machine and type.

JUAN B. ALVARADO.

Subscribed and sworn to before me this 18th day of July, A. D. 1859.

CUTLER McALLISTER,
U. S. Com.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

58 *Deposition of Pio Pico, a witness produced on behalf of claimant.*

United States district court, northern district of California.

THE UNITED STATES }
vs.
HENRY CAMBUSTON. }

SAN FRANCISCO, *Sept'r 1st*, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came PIO PICO, a witness produced on behalf of the claimant in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land-claims in the State of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by John P. Brodie, a sworn interpreter.

Present, Sol. Heydenfeldt, for claimant, U. S. dist. att'y for U. S.

Questions by claimant's att'y:

Ques. 1. Your name, age, and place of residence?

Ans. 1. Pio Pico; 58 years of age. I reside in the county of Los Angeles. I was governor of California from the end of 1844, the
59 whole of 1845, and part of 1846. I was duly commissioned as governor of California by the supreme government at Mexico, and have my commission. I ceased to be governor in August or Sept'r, 1846, and left California for Sonora, in Mexico. I ceased to act as governor on account of the foreign invasion of the country. I knew Henry Cambuston, and I got acquainted with him; I don't recollect the exact time, but long before 1846, he lived in Monterey.

Ques. Look at the original grant of eleven leagues made to Henry Cambuston, and say whether said grant is genuine, whether it contains your genuine signature and the genuine signature of your secretary, and whether it was made and delivered at the time it bears date.

(Here the witness is shown the original grant produced from the archives of the U. S. surveyor-general's office by R. C. Hopkins, the keeper of the archives, and which the said Hopkins brings into court by virtue of a subpœna duces tecum.)

Ans. I believe it is my signature and the signature of my secretary, and that it was signed on the day it bears date. I do not recol-
60 lect if it was delivered on that day or not. The seal on it is genuine. It is the government seal that was used on all official documents. The handwriting of the body of the grant is, I believe, in the handwriting of Agustin Olvera, the secretary of the departmental assembly. I do not believe grants were ever made without a petition, but they were sometimes made without an informe. The petition itself formed a part of the espediente. The petition itself was the commencement of the espediente. The informe was for the information of the government, and was a formality made use of if the government wished, but was not obligatory.

Ques. Do you recollect that there was a petition of Henry Cambuston in this case, and if you do not recollect the petition are you able to state that from the manner of doing such businesss at that time there must have been a petition?

(Ques. objected to as leading.)

Ans. I do not recollect whether there was a petition in this case. A petition must have been presented so as to have the title-papers issued.

61 Ques. Where a party applying for a grant had rendered services or advanced money for the use of the government, what would be the effect of those facts upon his application for a grant of land?

Ans. The effect would be according as the government considered the merits of the services, and at that time for one pound of gunpowder to fire a cannon at the Americans I would have granted the whole country. Just the same way as now; being a citizen of the United States, I would give up my life fighting against any other nation.

Ques. Was it the custom of the government of California to grant land in payment of services rendered the government, and in payment of debts due by the government; and, if yea, how long had that custom continued, to your knowledge?

Ans. It was not a general custom, but when governors wished to do so they did so. I believe that other governors beside myself must have done the same.

Cross-examination:

Questions by U. S. att'y:

62 I do not recollect the exact time that I ceased making grants, but it was probably I made them until I left the country.

Ques. What was the ordinary proceeding in making grants?

Ans. The party made a petition; the governor ordered an informe wherever he considered it necessary; after due information, the governor wrote a marginal decree, ordering the grant to issue; this marginal decree was properly dated, and on this decree the grant was issued and signed by the governor and secretary.

Ques. In making out the grant in conformity to the marginal decree, would the grant bear the same date as the marginal decree?

Ans. Not necessarily.

Ques. If the grant was made out and you did not sign it upon the date which it bore, or at the place where it was dated, would you alter the date and place?

Ans. I would not.

Ques. Do you know of any persons in the State of California
63 who can counterfeit your signature so as to deceive yourself?

Ans. I know of no person; I have seen one of my signatures forged, but it did not deceive me.

Ques. Do you know the U. S. marshal, M'r Pennie, and the U. S. dist. att'y, M'r Getchell, for the southern dist. of California?

Ans. I know them.

Ques. Do you recollect that they ever presented to you any of your signatures which you pronounced to be genuine and which afterwards turned out to be false?

Ans. A short time before I left Los Angeles to come to San Francisco M'r Getchell showed me some signatures, three of which he himself told me were believed to be forged.

Ques. If M'r Getchell had not told you anything about it would you have been deceived by those signatures and discovered by yourself that they were false?

64 Ans. I did not tell M'r Getchell that they were false, nor that they were genuine; he told me it was supposed they were forged.

Ques. Did you think that they were forged or not?

Ans. I thought or believed they were my genuine signatures.

Ques. You do not recollect having made the grant to Cambuston; and you only believe that you made the grant from seeing the grant?

Ans. Because I see the grant, the handwriting of which I know; my signature; the signature of the secretary, and the seal of the government.

Ques. You know nothing about the date except what you see from the grant itself?

Ans. Nothing else.

Ques. If a grant was dated at Los Angeles on 1st Sept. and presented to you at Monterey on the 15th of Sept'r, would you change the date and name of the place at the time you signed it?

65 Ans. I would have signed it without altering the date or place.

Direct examination resumed:

It was not customary, if the title-papers were drawn up at some other place, to date them from the seat of government, but it could be done if the governor thought proper. When M'r Getchell showed me those signatures, of which I have spoken in my cross-examination, I think we

were in M'r Sims' office in Los Angeles, or it may have been Getchell's office. I examined those signatures about 5 or 10 minutes. I only looked at them; did not examine them. They shew me my signature alone, disconnected with any other writing.

Cross-examination resumed:

Ques. Did you examine with an equal degree of care those signatures in Los Angeles and your signature to the grant in this case?

Ans. I am offended that the dist. att'y should suppose that I should pay as little attention in the examination of a signature which I
66 was to testify to under the solemn obligation of an oath as I would pay to others which I had been called to look at by a friend of mine.

Ques. Did you never examine with particularity things that you did not have to swear about as much so as things with regard to which you had to swear?

Ans. I may have done so, when asked by a friend to examine a letter or any other thing, but I have no recollection at present of having done it.

Ques. Did M'r Getchell show you the whole document, or did he show you only your own signature?

Ans. On one sheet of paper Pio Pico was written over a great many times. I can't say whether it was paper, leather, or parchment.

PIO PICO.

Subscribed and sworn to before me this 1st Sept'r, A. D. 1859.

CUTLER McALLISTER,
U. S. Com'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

67 *Deposition of Jacob A. Morenhaut, a witness produced on behalf of the claimant.*

United States district court, northern district of California.

THE UNITED STATES }
vs. }
HENRY CAMBUSTON. }

SAN FRANCISCO, *July 2d*, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came JACOB A. MORENHAUT, a witness produced on behalf of the claimant in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land-claims in the State of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Tully R. Wise, acting U. S. att'y; Sol. Heydenfeldt, for claimant.

Questions by att'y for claimant:

I came to California in September, 1846; went to Monterey in October, 1846. I was appointed French consul for California at Monterey in 1845, but I only arrived here in 1846. Another person during that ti me took my office temporarily; I am still French consul at Monterey;
68 have held that office ever since; now it is only a vice-consulate.

I was once examined in this case before; I do not recollect the time. At that time I stated that I was interested. I am no longer interested in the event of this suit.

I sold my interest in the suit to M'r Thomas O. Larkin. He is now dead. That was a bona-fide sale, but I have not been paid in full for it. I hold no lien on this land for the purchase-money.

I first heard of the claim of Henry Cambuston to the lands in this case soon after I arrived here. I got a description of all the French residents in California, and I am certain that I was told that M'r Cambuston had a claim to a large tract of land on the Sacramento River. It was a great distance from there, and was not thought much of at that time. I got this information from M'r Gasquet, who was sent out as provisional consul until I could come. He performed the duties of consul before I arrived.

I got information of all the French subjects out here, on account of the interests that I had in them as their consul.

M'r Cambuston deposited a number of papers in the French
69 consulate. I can't say exactly when, but I think in 1847; perhaps in the beginning of 1848. It may have been before or after; I could not say exactly; it was a long time ago. Among those papers I am positive he shewed me the title. I think he shewed me the title to the land before he deposited it in the consulate.

What I can say positively is, that I saw the title long before there was any doubt made about it, and before the lands were of any value.

M'r Cambuston withdrew his papers from my possession, I think, in 1849.

After he had withdrawn it, I never heard of it. After I came back from Europe, in 1852, I heard of it.

M'r Cambuston informed me that he had deposited his title in the U. S. archives. He told me this. I do not recollect exactly when; it may have been before or after my trip to Europe.

I can swear positively that I have no interest whatever in the event of this suit. M'r Gasquet left this country in 1847, and has never been back since.

Cross examination:

Ques. by U. S. att'y. I sold my interest in this suit in August,
70 1858. I signed a deed when I sold it. I know that I was not long in this country when I saw that title. I was certainly not three years here when I saw it. I think it was less than a year after I arrived here that I saw that title. I was attracted by the quantity, 11 leagues, but it was not worth anything. At that time I don't think M'r Cambuston could have disposed of the title for anything.

At the time M'r Cambuston deposited his grant with me, I had never seen another grant, and I did not see another until after I came back from France. I recollect perfectly, now it has been recalled to me, that I saw M'r Cambuston's title before he deposited it with me.

J. H. MORENHAUT.

Subscribed and sworn to before me this 28th day of July, A. D. 1859.

CUTLER McALLISTER,
U. S. Com'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

71 *Deposition of José Matias Moreno, a witness on behalf of the claimant.*

United States district court, northern district of California.

THE UNITED STATES }
ads. }
HENRY CAMBUSTON. }

SAN FRANCISCO, *May* 13, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came José Matias Moreno, a witness produced on behalf of the claimant, in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land-claims in the State of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by William Schleiden, a sworn interpreter:

Present, S. Heydenfelt, of counsel for claimants, and P. Della Torre, U. S. attorney, for the U. S.

Questions by claimants' counsel:

1st. What is your name, place of residence, and occupation?

72 Ans. My name is José Matias Moreno; residence, San Diego; occupation is a commission agent and merchant.

2d. What position did you hold in the government of California in May, 1846?

Ans. I was secretary of state ad interim of California.

3d. Who was governor of California at that time?

Ans. Pio Pico.

4th. How long before and after May, 1846, was Pio Pico governor of California?

Ans. From February, 1845, to August, 1846, when he had to leave, in consequence of the war.

5th. At what period of time was he provisional governor, and at what time did he become constitutional governor by recognition of the supreme government?

Ans. As president of the departmental assembly, he became

73 governor in 1845, when Micheltowena left. By the constitution of Mexico at that time, in the case of a vacancy in the office of constitutional governor of the department, the vocal decano or senior member of the departmental assembly, succeeded to the office as provisional governor. Pio Pico thus succeeded to the office when Governor Manuel Micheltowena left California, about the month of February, 1845. In compliance with provisions of law, the departmental assembly then reported to the supreme government at Mexico the names of three persons from whom was to be selected by the supreme executive a constitutional governor for California. Pio Pico was one of these three so nominated, his name being first on the list, and he was appointed by Gen'l Herrera, who was then President of the Republic of Mexico. The appointment was made the 3d of September, 1845.

6th. Do you know the handwriting and signature of Pio Pico, and what have been your opportunities for becoming acquainted with it?

74 Ans. I know the signature of Pio Pico, having seen him write and sign his name repeatedly.

7th. Are you acquainted with Augustin Olvera? Do you know his

handwriting; and what have been your opportunities of becoming acquainted with it?

Ans. I know him personally. Know his handwriting, having seen him write very often.

8th. In the month of May, 1846, what place did Agustin Olvera hold under the government of California?

Ans. He was secretary of the departmental assembly, and whenever not occupied in that capacity he assisted me in my office as secretary of state ad interim.

9th.

(The witness is here shown the original grant, produced from the archives, by R. C. Hopkins, the keeper of the archives, and testified to by him in this case, and asked:)

Look at this grant and state what you know about it.

75 Ans. The body of the grant is in the handwriting of Augustin Olvera. The signature and rubric is the genuine signature and rubric of Pio Pico; the two signatures, "José Matias Moreno" and "Moreno," are the genuine signatures of witness.

10th. It appears by a note over your signature in this grant, and in your handwriting, that note of this grant was taken in the proper book; is thajt certificate true, and was a note so taken in the proper book?

(Obected to by counsel for U. S. on the ground that the book itself should be produced or its absence accounted for.)

And. There was a book of toma de razon in the office of secretary of state, in my charge, and in which I took note of this grant or title, and would not have certified to it otherwise.

11th. Did you execute this grant in your capacity of secretary of state, and at the time it bears date?

Ans. It was executed at the time and date mentioned therein

76 I did execute the grant in my capacity of secretary of state; it was one of my obligations.

12th. Did Pio Pico execute this grant as governor of California at the date which appears therein?

Ans. He did, and he ordered me also to sign it as secretary of state.

13th. Did you ever see or have in your possession the expediente which belongs to this grant; and, if so, at what time and of what papers did the expediente consist, to the best of your recollection?

Ans. There was a petition, signed by Cambuston, the claimant, addressed to the governor, praying for certain lands here in the north. don't remember the exact date, but it was anterior to the deed, after became the secretary of state on the 1st of May, 1846. I saw this petition, and thereto attached the informe of certain authorities—who they were I don't recollect—and containing an order of the governor directing the grant to issue.

14th. Are those all the papers which then formed the expediente?

77 Ans. That was all I saw.

15th. What became of the expediente?

Ans. It was deposited in the archives at Los Angeles, that is, in the departmental archives. The night Pio Pico and me left Los Angeles, the 10th August, '46, when that part of the country was invaded by the Americans, we nailed the departmental archives up in boxes and deposited them in a private house for safe-keeping. It was the house of Don Luis Vignes. We remained hidden in the mountains for twenty days. I was then informed that these archives had been denounced to the Americans and seized by them. At that time Los Angeles was the capital of the department of California.

16th. Look at the seal on the grant and say whether that was the genuine seal of the government at that date?

Ans. I think that this is the genuine seal of the government at that date. I think so from its appearance. Sometimes, for the want of ink to make an impression from the seal, the dye was held over candle-
78 smoke as a substitute, and that accounts for many of the seals having a blurred appearance.

Recess taken for half an hour.

Cross-examination:

Questions by U. S. dist. att'y.

1st quest.

Direct resumed:

1st. Do you recollect distinctly and positively of delivering the grant which has been exhibited to you to the claimant, Henry Cambuston, and do you remember any circumstances occurring at the same time which brings this fact positively to your recollection? And state what circumstances they were.

And. I made the first acquaintance of Mr. Cambuston in May, 1846, when he came down from the north, not only for the purpose of getting his title executed, but also for a political purpose, as the agent of influential persons who took an interest in the independence of the country. I was personally opposed to the scheme, not only as a private individual, but as secretary of state. In consequence I had several conversations with M'r Cambuston in my office, and he tried to persuade me to
79 join that party to which I was always opposed. I remember positively that at that time the said papers were executed and delivered to M'r Cambuston. I further remember that on or about the 3d of May a decree was published calling for a convention of the deputies from the different districts to meet at Santa Barbara in the month of June. I signed the decree as sec'y of state, by order of the governor, Pio Pico, contrary to my wishes and opinion. In several conversations with the governor, by night and day, trying to persuade him to alter his determination, I at last succeeded, in about ten days afterwards, in getting him to revoke the decree.

Cross-examination:

Questions by U. S. dis't att'y.

1st. Of what place are you a native?

And. A village of Lower California called San Antonio.

2d. What is the exact date of your appointment as secretary ad interim?

Ans. The first of May, 1846.

80 3d. When did you first became acquainted with the claimant, Henry Cambuston?

Ans. In the month of May, 1846, at Los Angeles.

4th. Do you know how long he had then been in the country, and where he then resided?

Ans. I do not know when he arrived in the country, but I was told by M'r Olvera, a friend of his, that M'r Cambuston owned the printing establishment at Monterey, and also had a school there, which was a very scarce thing then.

5th. Do you remember making that certificate which is in your own handwriting on the grant, or do you only know of it by now seeing it?

Ans. I remember taking this note on the book, because no document left the office without it. There is not the slightest doubt in my mind that I took note of this particular document, though I do not remember exactly how or the date it was taken.

81 6th. Who made the entry in the book of toma de razon?

Ans. I do not remember whether it was me myself or Olvera who made the entry in the book. Olvera was acting in my office, as I have before described, and urging the despatch of this grant. I have no doubt the entry was made, because I attached my signature; I am sure of it.

7th. Where did you attach your signature?

Ans. It was usual to put down in the book the date, number of leagues granted, to serve as a kind of index; I had to put my signature to it as evidence. It was always the duty of secretary of state to do so.

8th. Did you sign every entry that was made in that book?

Ans. Every document that was entered in the book, I signed it with media firma. In the book I only used my half signature.

9th. Describe the size and general appearance of that book in

82 which you made the entries of this grant, and for what years it was the book of entries.

Ans. There were no bound books at that time; they generally sewed together some quires of foolscap paper, of sufficient size to last one year. This was one of those books.

10th. What was the date of the first entry in that book?

Ans. It was some day in May, but I don't remember which. When I came into office there had been no secretary of state for some time, because my predecessor had been sent by the governor to the city of Mexico; consequently there were some grants issued at that time without the signature of the secretary of state, the owners whereof applied to me afterwards for the requisite signature, which I gave after consultation with the governor, attaching the respective dates when signed by me. These documents were noted in book of toma de razon opened and began by my predecessor. I then opened a new book of toma de razon for the entry of grants made in my time.

83 11th. Then there were two books of toma de razon for the year 1846?

Ans. Yes, there were; but I do not know whether the book of my predecessor commenced with the beginning of 1846, or before.

12th. Was the book you made sewed up together with the book of your predecessor, or was it an entirely separate book?

Ans. It was a separate book.

13th. Did you ever see in those archives, while in your charge, a toma de razon for the year 1845?

Ans. I saw books for previous years, but I do not particularly remember whether I saw the one for 1845.

14th. Do you remember seeing in the archives a book in which were noted the land-grants made in the years 1844 and 1845?

Ans. Having no particular necessity to look after those books, I do not remember having seen them.

84 15th. Where is the toma de razon which you made for the year 1846?

Ans. I do not know where it is, but it remained in Los Angeles with the archives, boxed up, when I had to leave.

16th. Have you never seen it since?

Ans. No.

17th. Did the departmental assembly hold any sessions after the date of the alleged grant in this case?

Ans. The departmental assembly was in session at the time I became secretary of state. I took my oath of office before them, and they remained in session some time afterwards.

18th. Did the departmental assembly ever approve this grant?

Ans. I do not remember.

19th. Did not the departmental assembly, about and after the date of that grant, transact a great deal of business connected with land-titles?

Ans. They decided various questions connected with land-
85 claims. I remember that several claims were confirmed.

20th. What was the date of Cambuston's petition for the land?

Ans. I do not remember. It was made several months before I came into office.

21*th*. To what governor was it addressed?

Ans. To Governor Pio Pico. I do not remember *I* having seen his name, but it must have been him, because he was the only governor for about a year previous. It was customary, but not necessary, to put in the governor's name.

22d. Who was the secretary that attested the governor's order to issue the grant?

Ans. The petition of Cambuston for this grant was handed in before I came into office. I saw an order on the expediente, signed by Gov. Pio Pico, to issue the title. It was attested by no secretary, and only signed by the firma media of the governor. According to the Mexican law, it was not necessary for the secretary to attest the marginal orders of the governor.

86 23d. Do you know when Governor Pio Pico was sworn in as constitutional governor?

Ans. At the time Pio Pico took the oath of office I was at San Diego, and so do not know of my own knowledge; but I was informed by letter from the governor of the fact. In that letter the governor informed his friends that on that day he took the oath of office. I have the letter in the city, and can produce it. I do not remember the date.

24th. What was the plan for the independence of California that Cambuston was arranging when he came to get his grant?

Ans. I did not see a written plan, but, as I remember, it consisted in proclaiming the independence of Upper California on account of the want of protection of the central government, and because they were threatened by the American invasion, desiring thus to remove the pretext for American occupation.

25th. I understand you to say that you were opposed to this plan?

87 Ans. I was. The reason was because some favored the plan of getting protection from England, contrary to my feelings; and though I knew that I could not expect any protection from Mexico, yet, being a Mexican-born citizen, I still sympathised with my native country. However, the principal reason for opposing this plan was that I believed it would be for the greatest benefit to the country to be occupied by the Americans, because the American is the most desirable government for the people.

26th. Was Governor Pico aware of this plan?

Ans. Yes; he was aware of it, though he did not favor it. He was at first in favor of a convention to discuss the matter, but after my

conversations with him, as detailed in my direct examination, he revoked the order which he had issued calling the convention.

27th. How long did Cambuston remain at Los Angeles, at the time of this suit, to get his grant?

Ans. About one week, more or less, as near as I remember.

88 28th. Did you and Governor Pico remain at Los Angeles all the time between your appointment as secretary and the arrival of the Americans at that point?

Ans. No. In the month of June we left Los Angeles to go to Monterey, but we got no farther than a place called Santa Margarita, near San Luis Obispo. Our object in going was to fight Castro, who was in arms against the government. The civil contest was stopped by the arrival of the Americans. Gen'l Castro met Governor Pio Pico about the 10th or 12th of July, and Castro and his forces proceeded to Los Angeles two days in advance of Pio Pico.

Examination adjourned until Monday next at 10 o'clock a. m.

W. H. CHEVERS,
U. S. Comm'r.

MONDAY, *May 16th*, 1859—10 o'clock a. m.

Present: M'r Heydenfeldt, of counsel for claimant, and witness José Matias Moreno.

89 On account of the absence of the U. S. dist. att'y and his inability to be present, examination adjourned until to-morrow at 10 o'clo'k a. m.

W. H. CHEVERS,
U. S. Commissioner.

TUESDAY, *May 17th*, 1859—10 o'clock a. m.

Present: M'r Heydenfeldt, of counsel for claimant, and witness José Matias Moreno.

On account of the absence of the U. S. dist. att'y and his inability to be present, examination adjourned until Thursday next at 10 o'clock a. m.

W. H. CHEVERS,
U. S. Commissioner.

THURSDAY, *May 19th*, 1859—10 o'clock a. m.

Present: M'r T. W. Park, representing M'r Heydenfeldt, of counsel for claimant, and P. Della Torre, U. S. dist. attorney.

Examination adjourned, on motion of M'r Della Torre, and by consent, until Tuesday morning next at 10 o'clock.

W. H. CHEVERS,
90 *U. S. Commissioner.*

TUESDAY, *May 24th*, 1859.

On account of the indisposition of the U. S. attorney and his inability to attend, examination adjourned until to-morrow at 10 o'cl'k a. m.

W. H. CHEVERS,
U. S. Comm'r.

WEDNESDAY, *May* 25, 1859.

Examination continued until to-morrow at 12 o'cl'k m.

W. H. CHEVERS,
U. S. Commissioner.

THURSDAY, *May* 26, 1859.

Examination resumed from yesterday.

Present: Counsel for claimant, the U. S. attorney, witness, and interpreter.

Cross-examination:

27th. Look at the paper now shown to you, and say if the name Pio Pico therein is the genuine signature of Pio Pico, formerly governor of California.

91 Ans. I am not quite sure, but it appears to be the signature of Pio Pico.

(Question and answer objected to by the claimants' counsel as a matter foreign to this inquiry, and relating to a title not in controversy in this case.)

At the request of claimant's counsel the signature on this paper is shown to M'r R. C. Hopkins, so that he may identify it should it be hereafter offered in evidence.

28th. Look at the flourish at the end of and beneath the words Pio Pico, and say if you ever saw him make such an one.

(Same objection as above.)

Ans. I have seen him write, and sign his name repeatedly. The flourish on this document looks very much like those I saw him make, though I cannot assert positively that it is genuine, because it often depends on the pulse to make one flourish exactly like the other.

29th. Compare this signature with that one of Pio Pico's signed to the letter which you have produced this morning, addressed by him to yourself, and dated Angeles, April 20th, 1846, and say whether

92 you consider the signatures alike or different.

(Objected to as to the comparison of handwritings, for the reasons stated in the foregoing objections, and for incompetency.)

Ans. I find some difference between the two. I know without doubt that the signature on the letter addressed to me is his genuine signature. It having been written at a time when he was exalted by his nomination for governor, there might be some difference with the signature shown me, which may have been written at a time when he was not of the same disposition of mind. It might account for it.

Richard Tobin is here sworn as interpreter on behalf of the Government.

30th. Look at the words Pio Pico, with a rubric annexed, upon the paper now shown to you, and say if you consider it a genuine signature of the Pio Pico who was formerly governor of the Californias.

Ans. I can't state positively whether it is his genuine signature

93 and rubric or not. It looks like it, and I think it is.

(Questions and answer objected to, because the paper shown to the witness is a grant in another case, that of E. L. Brown et als., and a matter entirely foreign to the case in controversy.

At the request of claimant's counsel the signature on this paper is shown to M'r R. C. Hopkins, so that he may identify it should it be hereafter offered in evidence.)

31st. Compare it to the signature on the letter above spoken of, and state if there is any, and what difference between them.

(Question objected to for reasons above-stated, and incompetency.)

Ans. The letter which is referred to I am well acquainted with; I know the origin of it, and I am therefore certain the signature to it is genuine, but I am shown only a part of the paper to which the signature is attached; I know nothing of the contents of it, and cannot therefore be certain that the signature upon it is genuine.

32nd. You were asked if you saw any and what difference be-
94 tween the two signatures; you have not answered that; will you please do so now?

Ans. I presume that when the governor signed this letter he felt well, that his nerves were steady, and therefore that signature is written clearly and well. This other signature may have been made by him when he was not calm, and perhaps was signed in a careless and rapid manner. There is considerable resemblance, bastante semejanza, between them.

33d. Are the signatures which purport to be yours, on the same page, your genuine signatures?

Ans. Those signatures which purport to be mine, I do not recognize them at all; I was not secretary at the time this paper bears date, to wit, 29th December, 1845.

34th. On what day in the month of June, 1846, did you and Governor Pio Pico leave Los Angeles?

Ans. We left Los Angeles on the 17th June.

95 35th. When did you arrive at Santa Margarita?

Ans. About the 1st of July, because we stayed at Santa Barbara a few days. I mean by about the 1st of July, between the 8th and 12th of that month.

36th. When did you arrive at Santa Barbara, and how long did you remain there?

Ans. We arrived there the 20th or 21st of June, and stayed there about ten days.

37th. Did you, at any time, receive grants of land yourself?

(Question objected to by claimants' counsel as irrelevant.)

Ans. No, sir.

38th. Did you ever apply for any?

Ans. I never did ask or petition for anything, because I was restrained from petitioning by motives of delicacy on account of my official position. I had some lands in Lower California, which I purchased from the Government at public auction.

96 39th. In what month in 1846 did José Maria Covarrubias leave California for Mexico?

Ans. He left Los Angeles on 13 February, 1846. He went by sea, and embarked from San Diego.

40th. When did he return?

Ans. He arrived at Santa Barbara in a schooner on his return from Mexico about the end of June or beginning of July, 1846.

41st. Did Pio Pico ever sign, as governor, a grant for land after July 7th, 1846?

Ans. I don't know that he did for any lands in Upper California. I don't remember. No me acuerdo.

42d. Did you, as secretary, ever attest a grant after the same date?

Ans. I don't remember.

43rd. Did you, as secretary, attest a grant by Pio Pico of the orchard of the mission of Santa Clara?

97 (Objected to as irrelevant.)

Ans. There were a great many transactions at that time in regard to missions, and a good many papers signed in reference to them, but I have no distinct recollection of a grant relating to that particular mission. It is possible that such a paper was made, but I cannot tell without seeing it, if it exists.

44th. Answer that same question with respect to a grant of lands near Yerba Buena to one Benito Diaz.

(Objected to by cl'ts' counsel as irrelevant.)

Ans. I don't now remember having signed such a grant. I was not familiar with the northern part of California. I know that many grants were made, but I have no distinct recollection with regard to them. Down about Los Angeles we called this part of the State the northern part.

45th. When you and Governor Pio Pico left Los Angeles for Santa Margarita in June, 1846, what was done with the archives?

98 Ans. They were left in the government house at Los Angeles.

46th. How often have you been examined as a witness in land cases before the land commissioner, and in the district courts?

Ans. In the land commission from 3 to 5 times; in this court, I think this is the 3rd time, and in the dist. court at Los Angeles never.

47th. How often have you been examined to prove the execution and delivery of the grant in cases where no expediente was produced?

Ans. This is one case, and there may have been others. I don't remember.

Cross-examination closed.

Witness here desires to correct the answer to the 5th question on direct examination, by saying that five persons, instead of three, were nominated by the departmental assembly to the supreme govern-

99 ment of Mexico, for the office of governor of the Californias, and those persons were as shown by the paper exhibited to-day by the witness, and a copy of which is now filed by him, and marked "W. H. C. 1," and which is hereto attached and made part of this deposition.

Witness also desired to correct his answer to question as to the time when Pio Pico was sworn in as constitutional governor. It was on the 18th April, 1846, instead of the date of the letter from Pico to witness, which is 20th April, 1846, and which letter is now filed and made part of this deposition, and is marked "W. H. C. 2."

Further question by dist. att'y:

How many seals bearing legend "gobierno del depto. de Californias," such as appears upon the grant in this case, were there in the governor's office?

Ans. Only one.

JOSÉ MATIAS MORENO.

100 Sworn to and subscribed May 26th, 1859, before me.

W. H. CHEVERS,
U. S. Commissioner.

Document marked "W. H. C. 1," annexed to deposition of José Matias Moreno.

W. H. C., 1.

Segunda clase. Sello 3°. 4 reales. Para el bienio de mil ochocientos cincuenta y ocho y cincuenta y nueve.

José Y. deA nievas, oficial mor con ejercicio de decretos del ministerio de estado y del despacho de gobernacion de la República Mexicana, certifico en la mas debida forma, que en el espediente, que abra en este ministerio con la caratula de gobiernos de los departamentos—año de 1845—nombramiento de gobernador del departamento de Californias en el Sr. D. Pio Pico, se hallan los comunicaciones siguientes:

"GOBIERNO DEL DEPARTAMENTO DE CALIFORNIAS.

"E. S.: Tengo el honor de remitir á V. E. para que lo eleve al conocimiento del E. S. presidente interino un ejemplar del acuerdo de la honorable asamblea de este departamento del 27 de Junio último, en
101 que propone cinco individuos al supremo gobierno para el nombramiento de gobernador constitucional del departemento. Al dirigir á V. E. este acuerdo espero interpondrá su valimiento con el E. S. presidente, á fin de que se sirva nombrar cuanto ántes la persona que deba sucederme en el gobierno, cuyo desempeño temporal recayó por la ley en mis debiles fuerzas, y reproduzco á V. E. las seguridades de mis respetos.

"Dios y libertad.

"Ciudad de los Angeles, Julio 8 de 1845.

"PIO PICO.

"E. S. ministro de relaciones gobernacion y policia Mexico.

Al margen: "Se nombra el propuesto el primer lugar." Una rubrica.

Pio Pico, gobernador interino del departamente de las Californias, á sus habitantes sabed, que la honorable asamblea departamental ha acordado lo siguiente:

La exma. asamblea departamental en acuerdo de hoy y en uso de la facultad 17ª del artículo 134, de las bases orgánicas de la nacion,
102 ha tenido á bien proponer al supremo gobierno para gobernador del departamento á los siguientes: Primero, E. S. D. Pio Pico; segundo, Sr. D. Juan Bandini; tercero, Sr. D. Mariano G. Vallejo; cuarto, Sr. D. José de la Guerra y Noriega; quinto, Sr. D. Antonio Ma. Osio. Lo tendra entendido el E. S. gobernador del departamento para su publicacion y demas fines.

Sala de sesiones de la honorable asamblea de Californias.

Junio 27 de 1845.

PIO PICO,
Presidente.

AUGUSTIN OLVERA, *Secretario.*

Y para que llegue á noticia de todos y tenga su cumplimiento, mando se publique per oando en los pueblos del departamento, y se circule á quienes correspondá.

Dado en la ciudad de los Angeles á 28 de Junio de 1845.

PIO PICO.

JOSÉ MA. COBARUBIAS,
Secretario.

Segunda clase para el bienio de mil ochocientos cincuenta y ocho y cincuenta y nueve. Sello 3º. 4 reales.

EXMO. SR.: Teniendo en consideracion el E. S. presidente interino, el acreditado patriotismo de V. E., así como sus recomendables circunstancias que lo hacen digno de la confianza del supremo gobierno
103 se ha servido nombrar á V. E. gobernador de ese departamento, conformandose con la propuesta hecha por esa E. asamblea en 27 de Junio anterior.

Al comunicarlo á V. E. le reproduzco las seguridades de mi consideracion.

D. Septe. 3, 45.

PEÑA Y PEÑA.

E. S. D. PIO PICO,
Gobernador del Departamento de Californias.

Y para constancia, conforme al acuerdo del E. S. ministerio que recayo en la solicitud elevado por el Sr. D. Juan P. Brodie, espido la presente en la ciudad de Mexico á cuatro de Agosto del año mil ochocientos cincuenta y ocho.

[SEAL.] J. Y DE ANIEVAS.

Secretaria de estado y del despacho de relaciones exteriores República Mexicana.

José Miguel Arroyo, intendente honorario de ejercito y oficial mayor 1° de ministerio de relaciones exteriores, certifico q. Da. José Y Anievas es oficial mayor del ministerio de gobernacion en la República Mexicana y la anterior firma es la suya q. usa en los documentos q. autoriza.

Mexico, Agosto 4 de 1858.

J. MIGUEL ARROYO.

Dros. 4 P.

104 LEGATION OF THE UNITED STATES OF AMERICA,
MEXICO, *August 4th*, 1858.

The undersigned, minister of the United States of America for the republic of Mexico, do hereby certify that the signature of J. Miguel Arroyo, subscribed to the foregoing certificate, is in the proper handwriting of the said person, the same as used by him in all his official acts, are entitled to full faith and credit as such. I do further certify that the said chief clerk is the only person authorized by law to certify to documents to be used in foreign countries, and that the seal attached to his signature is the only one used to certify official acts in the department of foreign relations.

{LEGATION OF THE U. STATES, MEXICO.} In testimony where I have hereunto set my hand and affixed the seal of this legation the day and year above written.

JOHN FORSYTH.

Translation.

[Second class. 3 seal for the years 1858 & 1859. 4 reales.]

105 José Y. de Anievas, chief clerk in charge of the decrees of the ministry of state and dispatch of government of the Mexican Republic, do certify in due form that in the record on file in this ministry, entitled "Governments of the departments, year 1845. Appointment of governor of the department of Californias in Señor Don Pio Pico," is to be found the following communication:

"GOVERNMENT OF THE DEPARTMENT OF CALIFORNIAS.

"EXCELLENT SIR: I have the honor to remit to you, that you may bring the same to the knowledge of his excellency the president ad interim, a copy of the decree of the honorable assembly of this department, of the 27th of June last, in which five individuals are proposed to

the supreme government for the appointment of constitutional governor of the department. In transmitting this decree to your excellency I hope you will interceed' with his excellency the president, to the end that he may be pleased to appoint, as soon as possible, the person who is to succeed me in the government, the temporary exercise of which devolved by law on my feeble abilities.

106 "I renew to you the assurances of my respect.

"God and liberty.

"City of Los Angeles, July 8th, 1845.

"PIO PICO.

"To his excellency the minister of government relations and police, Mexico."

On the margin: "The individual first proposed is appointed." A rubrica.

"Pio Pico, governor ad interim of the department of the Californias, to the inhabitants of the same:

"Know ye that the honorable departmental assembly has decreed the following:

"The most excellent departmental assembly, by decree of this date and in exercise of the 17th power of article 134 of the organic bases of the nation, has thought proper to propose to the supreme government for governor of the department the following gentlemen: First, his excellencey Señor Don Pio Pico; second, Señor Don Juan Bandini; third, Señor Don Mariano G. Vallejo; fourth, Señor Don José de la Guérra y Noriega; fifth, Señor Don Antonio Ma. Osio.

"His excellency the governor will take due notice of the same, for its publication and other ends.

"Hall of sessions of the hon. assembly of California, June 27th, 1845.

107 "PIO PICO, *President.*

"AUGUSTIN OLVERA, *Secretary.*

"And that it may have full effect and come to the notice of all interested, I order that the same be published by proclamation in the towns of the department, and be circulated to whom it may concern.

"Given in the city of Los Angeles the 28th day of June, 1845.

"PIO PICO.

"JOSÉ M. COVARRABIAS, *Secretary.*"

"MOST EXCELLENT SIR: His excellency the president ad interim, taking into consideration the acknowledged patriotism of your excellency, as also the commendable circumstances which make you worthy of the confidence of the supeme government, has been pleased to appoint your excellency governor of that department, in conformity with the proposal made by that hon. assembly on the 27th of June last.

"In communicating the same to your excellency I renew the assurances of my consideration.

"Dios, &c.

"Sept. 3d, 1845.

"PEÑA Y PEÑA.

"To his excellency, PIO PICO,

"*Governor of the Department of Californias.*"

108 In testimony whereof, and in conformity with the order of his excellency the minister, appended to the petition presented to

him by Señor Don Juan P. Brodie, I issue this present copy, in the city of Mexico, the fourth of August, 1858.

[SEAL.] J. Y. DE ANIEVAS.

José Miguel Arroyo, honor'y intendant of the army and first chief clerk of the ministry of exterior relations, do certify that Don José Y. Anievas is chief clerk of the ministry of government in the republic of Mexico, and that the foregoing is his signature, and used by him in the documents authenticated by him.

Mexico, August 4th, 1858.

106.

[SEAL.] J. MIGUEL ARROYO.

Dues, $4.

W. H. C. 2.

ANGELES, *Abril* 20 *de* 1846.

Sor. Don Matias Moreno:

Muy señor mio y amigo:

Me cabe la satisfaccion de comunicar á V. que el supremo gobo. conformandose con la propuesta de esta honorable asamblea se digno en fha. 3 de Septe. del año pp'do conferirme el destino de governador
109 del departamto. segun la comunicacion del exmo. sor ministro de relaciones exteriores, gobernacion y policia.

Para corresponder á la confianza con que se me ha honrado, careciendo de las cualidades necesarias para el buen desempeño de um puesto, me asiste desde ahora la esperanza, de que al invocar la cooperacion de los ciudadanos que como V. se distinguen por sus luces, rectitud y patriotismo encontraré un seguro camino para el acierto de mis operaciones gubernativas, y esto es lo que tranquiliza la inquietud de mi espiritu por verme colocado al frente de los negocios publicos en circunstancias tan asarosas.

Reitero a V. las seguridades de mi consideracion y aprecio, y tengo el gusto de suscribirme y ofrecerme en el destino como su atento servidor y amigo.

PIO PICO.

(Endorsed:) Sor. Dn. Matias Moreno Frontera.
[SEAL.]

(Endorsed:) Filed Sept. 8th, 1859. W. H. Chevers, clerk.

110 *Explanatory statement of José Matias Moreno.*

In d'st. court United States for the northern district of California, *ss:*

UNITED STATES
vs.
CAMBUSTON.

The undersigned, José Matias Moreno, being duly sworn, deposes that, within a few days last past, he has examined as a witness on behalf of the claimant in the above-entitled cause, and in the course of his examination testified in substance that, during the year 1846, he was secretary ad interim of the governor of California, from the first day of May of that year until some time during the month of August of the

same year; and that during the said period, in affixing his name as secretary to grants issued during that period, he was in the habit of annexing also the date at which it was done; but, to avoid any misapprehension as to his testimony in this respect, and in justice to himself, he now states, by way of explanation, that when he commenced to act as secretary, as aforesaid, on the 1st May, 1846, there were some grants of a previous date, which were made after Covarrubias, the governor's secretary, had left Los Angeles for Mexico, on official business, on
111 the 13th February, 1846, and by reason of his absence these grants, which were subsequently made, were not signed and attested by him; and when this deponent commenced to act as secretary, these grants, though made before, had not, in fact, been issued and registered in the proper book; and, under the direction of Governor Pio Pico, this deponent, after he commenced to act as secretary, signed his name to these grants and attested them as secretary, and registered them in the proper book, notwithstanding the said grants on their face bore dates prior to the said first day of May.

Of grants of this class the deponent, since his deposition was taken as aforesaid, has examined two, to wit, one made to José Castro, dated 4th April, 1846, for eleven leagues of land, on the San Joaquin River, and one made to José Ma. Flores, dated 21st April, 1846, for the place called "La Liebre," both of which are genuine grants; and, though dated before I commenced to act as secretary, were in fact signed, attested, and registered by me, at the request of Governor Pio Pico, after the 1st day of May, 1846, and during the early part of said month; and, though the particular days on which I affixed my signature to said grants does not appear on the face of them, I recollect that it
112 was done in the early part of the said month of May, soon after I commenced to act as secretary.

I have examined the signatures to the said grants and know them to be genuine, and the reasons why they bear date before I commenced to act as secretary are those above stated.

I desire to make this explanation as an act of justice to myself and to the claimants under these grants, and respectfully request that this statement may be deemed and treated as a part of my deposition before referred to.

Dated at San Francisco this 3rd June, 1859.

JOSÉ MATIAS MORENO.

Subscribed and sworn to before me this 3rd June, A. D. 1859.

[SEAL.] GEO. T. KNOX,
Notary Public.

Sworn to and subscribed June 4th, 1859, before me,

W. H. CHEVERS,
U. S. Commissioner.

The counsel for the claimant offers the foregoing sworn state-
113 ment of Moreno by way of explanation, the district attorney being present and objecting thereto.

W. H. CHEVERS,
U. S. Commissioner.

U. S. COM'R'S OFFICE,
San Francisco, Cal., June 4th, 1859.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

Deposition of Henry W. Halleck, a witness produced on behalf of claimant.

United States district court, northern district of California.

THE UNITED STATES }
ads.
HENRY CAMBUSTON. }

SAN FRANCISCO, *May* 13, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the district of California, duly authorized to administer oaths, &c., &c., came HENRY W. HALLECK, a witness produced on behalf of the claimant in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 511, on the docket of the said board of
114 commissioners, and was duly sworn, and testified as follows:

Present, S. Heydenfeldt, of counsel for claimant, and P. Della Torre, U. S. attorney for the U. S.

Questions by claimant's counsel:

I came to California in January, 1847. I came as an officer of engineers to examine the Pacific coast with reference to military defenses, under orders of the United States Secretary of War. A few months after my arrival I was appointed secretary of state, which office I held until about the end of December, 1849, and as such had charge of the archives of the former Mexican government. I did not deliver them over until sometime in February, 1850. I then turned them over to Major Canby, assistant adjutant-general of the military department. While I had charge of these they were kept in Monterey. They were subsequently removed to Benicia, and kept there until they were consigned to the care of the U. S. surveyor-general.

Question. State whether, while you were in charge of said archives, your orders or duties required you to examine the same and report
115 upon the land titles in California, and what opportunities you had of becom' acquainted with their contents.

Answer. I was directed by Governor Mason to examine the archives and report on certain points connected with said land titles, which I did. The archives being very voluminous, the examination for want of time was not very thorough. The archives were also in great confusion and much mutilated, and were kept in different places of the town; parts of the same document were sometimes found in different places. With the assistance of W. E. P. Hartnell I arranged them in the best manner I could under the circumstances.

When I first went to Monterey, in January, 1847, I found a portion of the archives in the custom-house, which was then used as a hospital for the sick soldiers and seamen; they were piled up against the wall in the room in which the sick were lying, and the persons in attendance were using them as waste paper; they were supposed to be custom-house documents, and of no value. Some weeks afterward I picked up a mutilated document from the floor, and on examination found it to be a page of an expediente in reference to land titles. I called General
116 Kearny's attention to it, and he sent M'r Hartnell to see what they were. He reported that they were part of the archives of the government of Mexico mixed up with custom-house papers, and they were then removed to a more secure place and locked up. Another portion of what now constitutes the archives in the custody of the U. S.

surveyor-general were brought by Colonel Fremont in, I think, the month of May, 1847; they were packed on mules, and were in a very bad condition, being much torn and mutilated.

These constituted all the archives now in the custody of the surveyor-general, except a few that were brought in afterwards by individuals, who stated that they were public documents belonging to the archives. The fact of such deposit, and the name of the depositor, together with the date, were in all cases endorsed on such document, either by myself or M'r Hartnell.

I arrived in Monterey in January, 1847, and soon afterwards became acquainted with Henry Cambuston, the claimant, and met him frequently between that time and the following September, when I left Monterey for Lower California. I returned to Monterey the following spring or summer, and knew him at that place, where I continued to reside until February, 1850.

117 Quest. What reputation did he bear at the time you knew him in that community?

(Objected to by U. S. att'y, evidence as to character of the claimant not being at issue.)

Ans. He bore a very good reputation in that community. I never heard his character questioned.

Ques. Did you hear, while you were residing in Monterey, anything about the grant of land to Henry Cambuston made by the Mexican government?

(Objected to as tending to prove the existence of a grant by hearsay testimony.)

Ans. Soon after I became acquainted with Cambuston, in the early part of 1847, I heard that he claimed to have a grant of land from the Mexican government in the Sacramento Valley, and that he proposed to sell portions of it to Americans or others who would go there as settlers. I also remember that Cambuston was absent from Monterey on various occasions, and was reputed to be on his lands in the Sacramento Valley. I do not think I ever saw the title-papers, or

118 knew in what particular part of the Sacramento Valley it is.

Cross-examined:

I first took charge of the archives, I think, in June or July, 1847, being then on duty in Governors Mason's office, but I think I was not commissioned as secretary of state until August. The documents were, at that time, tied up in large bundles with pieces of rope or cord, and were only opened when persons enquired for particular papers. I was not then familiar with their contents, and cannot state the particular character of their contents.

M'r Hartnell at that time commenced arranging them under my direction, but I think no very great progress was made in that arrangement before I left. The arrangement was completed after my return the following spring. The archives were, when I took charge of them, in a small adobe building belonging to M'r Larkin, and very near his dwelling-house, which building the governor used as his office. There was but one room in the house. That building was not the old cus-

119 tom-house which I have mentioned was used as a hospital. The papers of which I have spoken were removed from the custom-house to this office some time prior to my going into the office of the governor. The removal took place in February, 1847.

I think it was in May that Fremont deposited in the office papers purporting to be archives. He left, I think, the latter part of May or 1st of June. I went into the governor's office and took immediate charge

of the archives a few days after General Kearney and Col. Fremont left for the United States. This place, used by the governor as his office, was a place of security, and was kept under lock and key, but was accessible to parties having business there. Whatever was in there was in a place of security. These archives contained a variety of papers, some belonging to the commissary dep't, &c., custom-house, treasury, and, in fact, every variety of papers, and any quantity of blank stamped paper, all of which I destroyed.

The Jimeno index I found in the archives. M'r Hartnell made a list of the espedientes which had at that time been found in arranging the archives on loose sheets of paper, which he afterwards copied in
120 the form now called Hartnell's index. In arranging these espedientes in the pigeon-holes of the case in which the archives were kept, M'r Hartnell read off the numbers, while I placed them in their order in the case. Some, I think, had already numbers on them, and others he numbered. I do not remember whether he copied Jimeno's index into this, or whether he copied the numbers of Jimeno's index, and read them off from his index. In speaking of expedientes, I refer to expedientes in land cases.

When I made a deposition respecting the archives on a former occasion, the whole of the papers in my possession at Monterey had not been placed in the office of the U. S. sur. general. I understand the remainder have since been brought from Benicia and deposited in that office.

I have heard recently something in regard to Cambuston' character. I have heard that he gave a deposition in the Limantour case which was untrue. The only authority I have for this is Colonel Della Torre, the U. S. dist. attorney. I never heard Cambuston's character questioned, except by the dist. attorney.

121 (It is admitted that this deposition was made on the 31st October, 1857.

The district attorney, when he asked the question as to character, he intended it as a general question. Had he known in reply to his first question, whether the witness had ever heard anything recently against the character of Cambuston and the witness answered affirmatively, that the witness was then going on to speak only of communications between the witness and the district attorney, the question would not have been put.)

H. W. HALLECK.

Sworn to and subscribed May 13, 1859, before me.

W. H. CHEVERS,
U. S. Comm'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

122 *Deposition of J. D. Stevenson, a witness produced on behalf of the claimant.*

United States district court, northern district of California.

THE UNITED STATES }
ads. }
HENRY CAMBUSTON. }

SAN FRANCISCO, *May* 13, 1859.

On this day, before me; W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths,

&c., &c., came J. D. STEVENSON, a witness produced on behalf of the claimant, in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land claim in the State of California in case No. 511 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, S. Heydenfelt, of counsel for claimant, and P. Della Torre, U. S. attorney, for the U. S.

Questions by claimant's counsel:

I arrived in San Francisco on the 6th day of March, 1847, in the service of the United States, as a colonel commanding the 1st regiment New York volunteers. I remained in San Francisco until about the 6th or 7th of April, '47, when I went to Monterey in my official capacity, remained there until about the 8th of May, 1847, when I went to
123 Los Angeles and assumed the command of the southern military district of California. I remained at Los Angeles until about the 26th or 27th of September, '48, when I relinquished that command and returned to Monterey, where I was mustered out of the service of the United States about the 26th or 27th of October, '48.

I became acquainted with Henry Cambuston in Monterey in the month of April, 1847. I was intimate with him, and the family in which he resided, until I left Monterey, in May, '47.

My acquaintance with him was renewed in the month of October, at Monterey, 1848, and we have been closely intimate from that time to the present. I have always known him and have ever heard him spoken of as a man of good character and of unquestionable integrity, until within some few weeks I heard M'r Meizner say that he had been informed by the district attorney that he had sworn falsely in the Limantour case.

(When the general question as to character was put, the district attorney interposed an objection before the witness answered to admissibility of character the present issue before this court.)

I desire to state that in the conversation between M'r Meizner
124 and myself, in regard to the declarations of the dist. att'y to him, relative to the character of Cambuston, that the dist. att'y stated that in consequence of the belief that Cambuston had sworn falsely in the Limantour case, that he should feel compelled to scrutinize all the testimony in the Cambuston case more carefully than otherwise, therefore he would require strict notice under the rules of the court, unless he was acquainted with the witnesses who were to testify.

While in Monterey, in April, 1874, I became very intimate with Doct. Townsend and his wife, who were residing in the Soberanes family, a daughter of whom Cambuston subsequently married, and in which Cambuston was residing at the same time. I was in the habit of being in that house daily, frequently 2 or 3 times a day. It was in that family, and from Doct. Townsend and his wife, that I first heard this grant spoken of, and in presence of Cambuston, Doct. Townsend and his wife came across the plains to California, and in speaking of the desirable locations for a permanent residence in California, the valley of the Sacramento was mentioned, when this Cambuston ranch was spoken of as being in that valley, and on the Sacramento River between Sut-
125 ter's line and that of a man named Flugge, then residing in Los Angeles, a German, who had been a clerk to Sutter, now deceased, which ranch of Flugge, I believe, was subsequently purchased by Larkin.

From the very day of my arrival at Los Angeles, the 10th or 11th of May, I became acquainted with Flugge, and continued intimate with him

until the time of my leaving there in the fall of 1848. During my residence in Los Angeles, I had frequent conversations with him about his residence on the Sacramento River, and about the ranch he owned there, and during various conversations he spoke of a grant to Cambuston on the Sacramento River between his ranch and Sutter's line.

In the fall of 1848, in October, when I came to Monterey, I renewed my acquaintance with Cambuston, when his grant up in the Sacramento was the subject of conversation, and it was in either October, 1848, or in the spring of 1849, at Monterey, that Cambuston showed me a paper which purported to be a grant to the ranch in question. I did not read the paper; I advised him to retain it carefully in his possession until there should be some organization of the government.

126 My impression is, that before he filed it in the archives with Major Canby, he came to me at San Francisco and consulted me as to the propriety of his filing it among the archives. I advised him to do so.

Cambuston does not now and never did speak the English language. My conversation' with him were either in French or through an interpreter in Spanish, upon my first arrival in California; afterwards I learned enough Spanish to speak to him in that language, and did so.

Examination adjourned until to-morrow at 10 o'clock a. m.

W. H. CHEVERS,
U. S. Commissioner.

U. S. COMMISSIONER'S OFFICE,
San Francisco, May 14, 1859.

Examination of J. D. Stevenson resumed from yesterday.

I mean, in saying that Cambuston does not now and never did speak the English language, I wish to be understood that up to 1850 I never heard him speak or attempt to speak a word of English, but within the last year or two I have occasionally heard him speak words of English, but I have never heard him speak a number of English words or

127 attempt to connect words or sentences in English.

When Cambuston first consulted me about recording his grant in the archives, he stated that he had employed Mr. Hartnell to search the archives for the expediente, which Hartnell reported could not be found. It was in consequence of the loss of the expediente from the archives that I advised him to take care of his grant and not have it recorded until the establishment of some permanent government. When he came up to San Francisco, in 1850, I was then the law partner of Charles Gilman, who, as well as myself, advised Cambuston to place his grant in the archives, which were then in charge of Major Canby, of the U. S. Army.

Charles Gilman removed from San Francisco in 1852 or '53. Hartnell is now dead. Gilman, if now alive, is in Maryland; he has an interest of four or five thousand acres in this ranch, and if alive, he is very old and infirm.

When I arrived in Los Angeles, in May, '47, or previous thereto in Monterey or San Francisco, it was generally reported that Pio Pico was the governor of California, and that he had left and gone to Mexico in consequence of the American forces taking possession of the country.

128 In the spring of 1848 Pico returned to California under a passport or letter of protection given by me to his family, which I understood when I gave it was to be sent to some Mexican port in the Pacific, in which passport he was recognized as late governor of California.

He returned in the spring of 1848 and reported to me; I took his parol of honor and allowed him to go to his ranch. Subsequently Gov. Mason ordered me to arrest him; I did arrest him; had him under my immediate charge and in my own quarters, where for weeks he was in the habit of eating at the same table and writing seated side by side or opposite each other at the same table, and from seeing him write daily I became familiar with his handwriting and signature, in addition to which, in my official capacity, while in command at Los Angeles, I was in the habit, almost daily, of seeing and handling official papers with his signature as governor, by which means I came to know his signature very well.

The witness is here shown the original grant produced from the archives and testified to by the witness, R. C. Hopkins, in this case, and says:

129 The signature of Pio Pico to that paper is genuine.

Cross-examination waived.

J. D. STEVENSON.

Sworn to and subscribed May 14, 1859, before me.

W. S. CHEVERS,
U. S. Com'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

Deposition of R. C. Hopkins, a witness produced on behalf of the claimant.

United States district court, northern district of California.

THE UNITED STATES }
HENRY CAMBUSTON. }

SAN FRANCISCO, 13, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the district of California, duly authorized to administer oaths, &c., &c., came R. C. HOPKINS, a witness produced on behalf of the claimant in case No. 349, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State
130 of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, Solomon Heydenfelt, for the claimant, and P. Della Torre, U. S. attorney, for the United States.

Question by claimant's counsel:

My name is R. C. Hopkins, and have charge of the archives in the office of the U. S. for California pertaining to the office of the secretary of the former Spanish and Mexican governments, and also the archives of the late board of U. S. land commissioners to ascertain and settle private land claims in California; have had charge of these archives since 1st of November, 1855.

I have brought before the commissioner a paper purporting to be a grant from Pio Pico to Enrique Cambuston of 11 square leagues of land in the valley of the Sacramento. It is dated city of Los Angeles, 23rd May, 1846. It is signed by Pio Pico, and countersigned by Matias Moreno as secretary interino. I brought the paper directly from the archives, where it appears to have been deposited on the 10th July, 1850 as appears by a certificate written upon it, signed by Assistant Adjutan

General Canby. I now produce it in obedience to a subpœna duces tecum issued from this court.

131 I have examined the archives for the purpose of finding if there was any note of this grant in any index, or toma de razon, and have found no entry in relation to it whatever. I have never been able to find in my office any index, or toma de razon, referring to grants issued in the year 1846. There is in the archives what is called the Jimeno index, which is an index to expedientes. When it was made I have no means of ascertaining. It contains an index of no expediente later than 1844.

An expediente of a land grant is a record of all the proceedings had in obtaining a grant, commencing with the petition for a grant, containing all the subsequent steps in relation to the matter, down to the issuing of the grant; a copy of the grant being usually attached to the expediente. The original of the grant was given to the party as his title deed. To render the expediente complete, it was necessary to attach a copy of the grant, but it was not always done, as there are many expedientes in the archives which do not contain a copy of the grant. I would say the same in regard to the diseño.

132 There is only one other index of expedientes in the archives besides the Jimeno. It is called the Hartnell index, and is said to have been made by him in the year 1848, commencing the enumeration where the Jimeno index leaves off, the highest number on the Jimeno index being 433, and the highest on the Hartnell index being 579. The original grants delivered to the parties have no number corresponding with the number in the expedientes.

The toma de razon of a land-grant is the record or note of a title to land, and may be either. In the office the book containing the notes of title is commonly called toma de razon, for such or such a year.

There is in the office among the archives a book of titles, issued by Governors Figueroa, Castro, and Gutierez, containing titles from the year 1833 to 1836. There is also a book of fierros y señales, brands, and marks, in which are recorded a good many matters in regard to ranchos and missions. There is also a book entitled Toma de Razon of Grants made by the governor in 1844 and 1845. There is no book of the records of grants or notes of title which were made in 1846.

133 I read and write the Spanish language with fluency, and speak it well enough for any purpose.

I have had a good deal of experience in examining and comparing handwriting and am perhaps somewhat skillful. I have compared the signature of Pio Pico to the original grant now before the Commissioner with his signature upon other grants in the archives and various correspondence and public documents, the genuineness of which has not been questioned, and from this comparison and examination I am of the opinion that that is the genuine signature of Pio Pico.

I am not as thoroughly familiar with the signature of Moreno, but, from examination and comparison, am of the opinion that his signature upon the original grant before the Commissioner is his genuine signature. I think the body of the grant is in the handwriting of Agustin Olvera. At the date of the grant in question Olvera was secretary of the departmental assembly. There is a great deal of his writing contained in the papers among the archives. The grant now in court is written upon paper bearing in water-mark the words "Casa D. Voll," surmounted by a crown. I have found many public documents and miscellaneous

134 correspondence of the date of this grant written upon paper bearing the same water-marks as this, showing that this paper was in

common use at the time. The seal on the grant in question is the genuine seal of the government of California of that day, as used by the governors on official documents requiring it. I have examined and know the difference between the genuine and the counterfeit one.

Cross-examined:

I have never met in my examination of the archives any mention, note, or allusion in any way of this grant, except the grant itself.

The Jimeno index and toma de razon for the years 1844 and 1845 have been printed by the government and were put in evidence in the Limantour cases.

The handwriting of the greater portion of the original Jimeno index is in the handwriting of Francisco Arce, who appears to have been clerk in the office of the secretary of state since 1839. This index has at the end of it, in Jimeno's handwriting, a certificate, and is signed by him; hence it is called the Jimeno Index.

Manuel Jimeno for a long time held the office of secretary of
135 state, and was repeatedly governor ad interim. The grant in this case is on common paper and not on "habilitated" paper. The most of the grants made about the date of this grant are written upon common paper. The seal upon "habilitated" paper was the custom-house seal of Monterey, bearing the legend of "Ad'a Mar't de Mont'y;" the seal upon this grant is altogether different and bears the legend of "Gobierno del Dep'to de Californias," and appears to be the seal used in the governor's office on official documents.

There is on file in the archives an alleged grant to one De la Rosa for the place called "Ulpinos." On the papers connected with that alleged grant there are three seals, each bearing the same legend, with the seal in this case "Gobierno del Dep'to."

The seal upon the alleged petition and upon the alleged approval of the departmental assembly are genuine.

That upon the alleged grant is, I think, a forgery—at least it is different from the other.

These three documents in the De la Rosa claim were filed on behalf of the claimants in the office of the U. S. surveyor-general for
136 California on the .

This claim was presented before the land commission and subsequently before this court in the name of Juan M. Luco and José Leandro Luco, and was rejected by both tribunals.

R. C. HOPKINS.

Sworn to and subscribed May 13, 1859, before me.

W. H. CHEVERS,
U. S. Comm'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

137 *Deposition of P. B. Reading, a witness on behalf of the claimant.*

United States district court, northern district of California.

THE UNITED STATES }
adv.
HENRY CAMBUSTON. }

SAN FRANCISCO, *May* 13, 1859.

On this day, before me, W. H. Chevers, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came PEARSON B. READING, a witness produced in behalf of the claimant in case No. 349, being an appeal from the board of com-

missioners to ascertain and settle the private land-claims in the State of California, in case No. 511 on the docket of the said board of commissioners, and was duly sworn and testified, as follows:

Present, S. Heydenfeldt, of counsel for claimant; P. Della Torre, U. S. attorney for the United States.

Question by claimant's counsel:

I have been examined in this case once before in November, 1853. I came to California in November, 1843. Part of the time I was in the mountains trapping, part of the time in the service of the United States, and part of the time living on my farm on the Sacramento River,
138 in Shasta County. Personally I do not know Harry Cambuston, the claimant; have seen him; have heard of the Cambuston grant, which is in controversy here; heard of it in 1846; cannot say where it was when I heard of it; I heard several persons speak of the Cambuston claim; I heard of it as purporting to adjoin Sutter's northern line, near the "buttes" on the Sacramento River.

Cross-examination:

I think it was about the year 1846, but I am not positive it was that year; if I have been taken down that I said "positively" in 1846, I wish it corrected.

Direct resumed:

In stating the time, I state it according to my best recollection; I think it was in 1846; it was certainly not before that. In looking back for 13 years it is impossible to recollect with certainty the matter in question, unless connected with some event.

P. B. READING.

Sworn to and subscribed May 13, 1859, before me.

W. H. CHEVERS,
U. S. Comm'r.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

139 *Stipulation admitting deposition of John C. Fremont in Morehead case.*

Northern district of California, dis't court.

THE UNITED STATES }
vs.
HENRY CAMBUSTON. }

It is hereby stipulated that the deposition of John C. Fremont, taken on the 7th of May, 1858, in the case of The United States vs. James G. Morehead, administrator, be admitted as testimony in this case.

TULLY R. WISE,
Acting U. S. Dis't Att'y.

(Endorsed:) Filed Sept. 8, 1859. W. H. Chevers, clerk.

140 *Deposition of John C. Fremont.*

THE UNITED STATES }
vs.
HENRY CAMBUSTON. }

The following extract from the deposition of John C. Fremont, in the case of "The United States adv. James G. Morehead, administrator," is admitted as testimony in this case.

Cross-examined:

I was aware of the value of these archives, (meaning the archives taken from the custody of Don Luis Vignes at Los Angeles,) and took precautions to have them protected. They were packed in bales and carried with blankets, so as to be secure from loss. I carried home some of them to be inspected at Washington; one I know I left there. The others were lost with other effects in the mountains of San Juan.

One of these titles referred to a grant to General Castro. It was, I think, a title; whether the full title or the papers concerning the grant, I am unable to say. This was lost in the mountains. There were three or four lost in the mountains. The lot left at Washington referred to the McNamara grant.

The archives I allude to were only those found at Los Angeles.
141 I know nothing of any at Monterey, or at any other point than Los Angeles. When I last saw them they were at M'r Larkin's private residence, or in a room adjoining a store above which he resided. It was not used as a hospital.

The feeling of the Mexican authorities towards Americans and American settlers in March, April, and May, 1846, was hostile.

SHAFTERS, PARK & HEYDENFELDT,
For Claimant.
TULLY R. WISE, *Acting U. S. Dis't Att'y.*

(Endorsed:) Filed Sept. 16, 1859. W. H. Chevers, clerk.

Stipulation to submit, &c., case.

In the district court of the United States for the northern district of California.

THE UNITED STATES }
vs. }
HENRY CAMBUSTON. }

It is hereby stipulated and agreed that any testimony hereto-
142 fore taken in any case may be used by the United States in this case; also that the claimant have the same right; also that the photograph hereto annexed is the one shown to Pio Pico by Getchell.

TULLY R. WISE, *Acting U. S. Dis't Att'y.*
SHAFTERS, PARK & HEYDENFELDT,
For Claimant.

It is further stipulated that this cause be submitted within five days, and upon written arguments to be furnished within five days afterwards.
Sept. 16, 1859.

SHAFTERS, PARK & HEYDENFELDT.
TULLY R. WISE, *Acting U. S. Dis't Att'y.*

(Endorsed:) Filed Sept. 16, 1859. W. H. Chevers, clerk.

143 *Affidavit of R. C. Hopkins and stipulation.*

THE UNITED STATES }
vs. } No. 349.
HENRY CAMBUSTON. }

NOTHERN DISTRICT OF CALIFORNIA, *ss:*

R. C. Hopkins, of the city of San Francisco, in said district, being duly sworn, deposes and says, that he is keeper of the archives of the former government of California, and has occasion daily to examine the same; that said archives have lately, and under affiant's direc

tion, been collated and bound in books; that in Vol. XVII, Superior Government State Papers, on page 430, appears a communication from Bocanegra, then minister of relations, to the governor of Cal'a, dated Mexico, Aug. 8, 1844, enclosing an extract from a letter rec'd from the French minister, reciting that Henry Cambuston, a Frenchman, established in Monterey, had been driven from California by order of the governor and comandante-general; that the motives for this arbitrary act were unknown, and that M'r Cambuston protested his innocence; the French minister protests against it and asks that Cambuston
144 be allowed to go where he pleases, even to California. The minister of relations transmits this extract in order that the governor may report on the matter to him.

And affiant further states that in "Vol. II, Departmental State Papers, Benicia prefecturas and juzgados," commencing on page 10, is found a letter from Manuel Castro, then prefect of Monterey, addressed to the secretary of state of the departmental government, dated Monterey, January 29, 1846, containing a statement of a difficulty that occurred between himself and Henry Cambuston, a teacher in the public school, at a ball given by one Santiago Stokes, and transmitting copies of the communications between Don Louis Gasquet, then acting French consul, and Don José Castro, then comandante-general, in relation to the said difficulty, and also a copy of the proceedings had against Cambuston by Manuel Castro.

In the communications between the French consul and the comandante-general, Henry Cambuston is spoken of as a French citizen both by the acting French consul and by General Castro. In the proceedings against Cambuston it appears that Cambuston was fined one
145 hundred dollars. All the documents herein referred to as found in said Vol. II are copies, attested by the prefect, Manuel Castro.

And affiant further says that it does not appear by the foregoing whether Cambuston did or did not apply to the acting French consul for his protection and interference, or to the French minister at Mexico in 1844.

And affiant further says that the proceedings and documents above referred to are all anterior to the date of the grant to Henry Cambuston of 23rd May, 1846.

And affiant further states that he knows of no other documents or papers in said archives bearing upon this matter.

R. C. HOPKINS.

Subscribed to and sworn before me this 1st Nov., 1859.

W. H. CHEVERS,
U. S. Com.

SAN FRANCISCO, *Nov.* 1, 1859.

It is hereby stipulated and agreed by and between the acting
146 U. S. attorney and the counsel of the claimant herein, Henry Cambuston, that the foregoing affidavit of R. C. Hopkins be read in evidence and admitted in the cause with the same effect as if the same had been regularly taken before a U. S. commissioner and filed before submission of the cause, subject to all legal exceptions except those provided for by this stipulation.

S. HEYDENFELDT,
Att'y for Claimant.
TULLY R. WISE,
Acting U. S. Dist. Att'y.

(Endorsed:) Filed Nov. 1, 1859. W. H. Chevers, clerk.

Opinion of the court.

United States district court, northern district of California.

UNITED STATES
vs.
NRY CAMBUSTON. } No. 349.

he claim in this case having been confirmed by this court, the cause
. appealed to the Supreme Court, by whom the decree was reversed
the cause remanded for further proofs.

he principal grounds assigned by the Supreme Court for their de-
on are: The want of all record testimony, or any explanation of its
ence; the unsatisfactory character of the evidence as to the genuine-
s of the signatures; the absence of any evidence that the prelim-
ry steps required by the law to a grant of public domain by the
vernors had been observed, especially those which were matters of
ord; that the grant was not recorded in the proper book, or in any
ok whatever, so far as appeared by the proofs; that it was a pure
nation, without pecuniary consideration or meritorious services; that
was unaccompanied with the forms and usages always observed in
making grants; that it was unknown to any one except the
148 grantee and one other interested person until 1850; that it was
made by a governor who had recently expelled his predecessor,
nd who was not proved to have been recognized by the supreme gov-
ernment; that it was made but one month and a half before the con-
quest of the country by the United States forces, and during the very
heat and conflict of the struggle in which the power of the governor was
overthrown; and, therefore, that his authority to make it and the bona
fides of its exercise should be scrutinized with great care.

As these objections had not been urged before the commissioners or
this court, the cause was remanded, that the claimant might, if in his
power, remove them by the introduction of further evidence.

Further evidence has accordingly been taken, and the cause is again
submitted for decision.

As to many of the points alluded to by the Supreme Court, the testi-
mony leaves no room for doubt. The original grant is produced from
the archives, where it has remained since 1850, when it was deposited
with Major Canby.

The signatures of Pico and Moreno are undoubtedly genuine. The
grant is also shown to be in the handwriting of Agustin Olvera,
149 who was secretary to the departmental assembly; and Mr. Hop-
kins, the keeper of the archives, states that the water-marks and
general appearance of the paper on which it is written corresponds with
that used at its date. That officer seems to entertain no doubt of the
genuineness of the signatures, and his opinion is of great value.

The real point in the case is not whether Pico and Moreno signed the
grant, but when they did so.

It is also shown, and the fact is known to the court as part of the his-
tory of the country, that Pio Pico had been recognized by the supreme
government as constitutional governor of the department before the
date of this grant.

Before proceeding to consider the proofs as to the fact that the pre-
liminary steps requisite to a grant were taken, and which explain the
absence of record evidence that it issued, it may be observed that, ac-
cording to the usage of the Mexican government, the record evidence,

as well of the preliminary proceedings as of the issue of the grant, should be found in the expediente, and in the book known as the toma de razon.

The espediente, as is well known, consisted of the petition, with the marginal order of the governor; the informes, when the' were furnished; the decree of concession, and, usually, a borrador, or draft, of the title delivered to the party. These papers, stitched together, formed the espediente, which was preserved among the archives and formed the only record of the proceedings, except that contained in the toma de razon.

This last was a book in which short entries were made of the date of the grant, the name of the grantee, and that of the land granted. If, therefore, the espediente in any case be lost, and the toma de razon for the year in which the grant was made be also lost, no record evidence of the grant would exist, unless it should happen to be referred to in other grants or espedientes, a reference not likely to occur with respect to a grant of late date.

It is shown in this case, and the fact is notorious, that the book of toma de razon for the year 1846 is not among the archives. It is also in proof that the archives were, for some months after the seizure of the country by the Americans, left in a condition where spoliations or loss of documents may have taken place. But the extent of such spoliations has been greatly exaggerated, for the archives exist in a degree of completeness and perfection greater, perhaps, than could have reasonably been anticipated, as is proved by the fact that all the expedientes, to the number of 422, of which a list was made by Jimeno, are found on the files. Nevertheless, it is possible that some espedientes have been lost. Col. Fremont appears to have removed several which were lost in the mountains; and the testimony of Capt. Halleck shows that such an accident may very possibly have happened.

The absence, therefore, of all record evidence of this grant does not conclusively show that no espediente in the case ever existed. It may possibly have been lost. But such an accident is extremely improbable.

It has already been stated that all the espedientes mentioned in Jimeno's list, to the number of 422, are found in the archives. The latest concession entered in that list is dated Dec. 24, 1844. I am not aware that the espediente for any concession mentioned in the toma de razon for the succeeding year, and which contains entries down to December 23, 1845, is lost; though such may be the case.

It was certainly, therefore, by a most unfortunate, and what would, a priori, be thought a most improbable accident, that the espediente in this case was lost, when so large a number of similar documents, subjected to the same chances, were preserved in an unbroken series. To prove the existence of the espediente, the claimant has examined Pio Pico and José Matias Moreno.

Gov. Pico swears that he does not remember the petition, but it must have been presented or the grant would not have issued; that he believes the signatures to be those of himself and Moreno, and that he also believes the grant was signed on the day it bears date. He does not pretend, however, to remember the fact of having made the grant, nor that any informes were asked for or obtained, but, with his usual caution or evasiveness, confines himself to the expression of his belief that it bears his signature and was executed at its date.

Moreno's testimony is more positive. He swears that there was a

petition signed by Cambuston, addressed to the governor, and praying for certain lands in the north; that the petition was dated previously to the grant; that he saw this petition when he became secretary, May 1, 1846, and that attached to it were the informes of certain authorities, (who they were he does not recollect,) and an order of the governor directing the grant to issue.

153 He also testifies that he made a note of the grant in the toma der azon, and that the espediente remained among the archives until Gov. Pico and himself were driven from the country.

No other witness is produced by whom the petition of Cambuston or the espediente was ever seen, or who has any knowledge of their existence.

The officers who gave the informes are not produced, though it would seem not difficult to discover who they were, and to procure from them evidence of the fact that they reported on the application.

As Gov. Pico makes no mention of any informe, and merely infers that a petition was presented from the fact that a grant issued, the only evidence tending to show that the espediente was formed, and that the usual preliminary steps were taken by the governor. is that of Moreno, a witness not unknown to this court, and whose credibility it has, on several occasions, been called upon to examine.

The existence of a document of this character—unknown to any other person—which is not found in its proper place of custody, where it would be found unless an extraordinary accident be supposed to have occurred—a part of which, viz, the petition, would probably have been known to other persons than the applicant, and certainly to

154 the authorities by whom the informe was furnished, can hardly be said to be satisfactorily proved by the uncorroborated testimony of Moreno.

The fact, however, that a grant was asserted to be in existence in 1846 or 1847 is testified to by some witnesses on whom the court can rely with entire confidence.

P. B. Reading testifies that he heard of this claim as early as 1846; that he heard several persons speak of the Cambuston claim as adjoining Sutter's northern line near the "Buttes," on the Sacramento. On his cross-examination he states that, according to his best recollection, he heard this in 1846, certainly not previously; but that in looking back for thirteen years it is not possible to recollect such a fact with certainty unless connected with some event.

Col. J. D. Stevenson, who arrived in California March 6, 1847, in command of the 1st Regiment N. Y. Volunteers, testifies that he became acquainted with Cambuston in April, 1847, and was intimate with him and his family until he left Monterey in May of the same year; that he renewed his acquaintance with him in October, 1848, and has been closely intimate with him ever since; that in 1847 he was in the habit of visiting daily the Soberanes family, with whom Cambuston was then

155 residing, and a daughter of whom Cambuston subsequently married; that Doctor Townsend and his wife were also residing with that family; and that he first heard the grant spoken of by these latter in presence of Cambuston; that it was alluded to as being in the Sacramento Valley, between Sutter's line and that of a man named Flugge; that subsequently, in May, 1847, he became acquainted with Flugge and continued intimate with him until he (witness) left Los Angeles in the fall of 1848; that he had frequent consultations with him respecting his rancho; and that in various conversations Flugge spoke of a grant to Cambuston between his own rancho and Sutter's line; that in October,

1848, or the spring of 1849, Cambuston showed him (witness) a paper purporting to be a grant for the rancho in question; that he (witness) advised him to retain it carefully until a government should be organized, and that he subsequently filed it with Major Canby by his (witness') advice.

Jacob A. Morenhout testifies that he first heard of the claim of Cambuston in 1846, soon after his arrival in California; that when obtaining a description of the French residents from his predecessor in the office of consul of France, he was told by the latter that Cambuston had a claim for a large tract of land on the Sacramento River, but that it
156 was then thought of no value; that in 1847, as he believes, or perhaps in the beginning of 1848, Cambuston deposited in the consulate a bundle of papers, among which was this title; and that he is positive he saw the title long before there was any doubt made about it, and before the lands were of any value.

The testimony of this witness, which had been taken before the commissioners, was disregarded by the Supreme Court because of his interest in the suit. The testimony above cited is contained in a deposition taken since the cause was remanded. In that deposition he states in the most positive manner that he has sold out all his interest in the claim, and that he has now no interest whatever in the event of the suit. His character is wholly unimpeached; his testimony entirely uncontradicted. He came to California as consul of France, and he continues to hold the office of vice-consul at Monterey to the present time. I know of no reason why his statements should not be received by the court with entire confidence.

Capt. H. W. Halleck testifies that he heard of this grant in the spring of 1847; and also heard that Cambuston was endeavoring to get Americans to go and settle upon it.

157 It must, I think, be taken as proved that a grant of some kind was in existence shortly after the date of the grant produced in this case, and before the return of Pio Pico to California in the spring of 1848. All the witnesses agree that the grant heard of by them was for lands in Sacramento Valley. Col. Stevenson identifies the grant he heard of with that now exhibited by the designation of Flugge's rancho as one of its boundaries, and his conversation with Flugge respecting it; and Morenhout mentions that he was "attracted by the quantity—eleven leagues—but it was not worth anything."

The objection, therefore, of the Supreme Court, "that the grant was unknown to any person besides the grantee and another interested party, until filed among the archives in 1850," is conclusively answered.

There is also some evidence to show that in October, 1846, the land was occupied and cultivated. But the only testimony on this point is that of Victor Prudon, and the fact is not material, for the occupation testified to was after the conquest, and the existence of the grant shortly after its date is proved, as we have seen, by more reliable testimony.

With respect to the consideration for the grant, Gov. Alvarado
158 testifies that Cambuston rendered services as public printer to the government from 1841 to 1846; that he was not paid for those services, and that he, Alvarado, offered him land in payment, which he did not then accept, but that he (witness) heard that one of his successors had granted land in compensation. With respect to this testimony it is to be observed—

1. That it is only hearsay.
2. That no mention is made in the grant of any such consideration.
3. That it appears from the documents produced from the archives,

and which will hereafter be referred to, that on the 8th of August, 1844, Bocanegra, minister of relations with Mexico, transmitted a dispatch to the governor of California in which he inclosed a communication from the French minister at Mexico complaining that Henry Cambuston, a French citizen, had been driven from California, and that Cambuston protested his innocence, etc.; the French minister, therefore, demands that he be permitted to return, etc.

The statement of Alvarado that from 1841 to 1846 Cambuston was employed at Monterey as teacher and public printer must consequently be untrue. It cannot be said, therefore, that the objection raised by the Supreme Court that this grant was a pure donation has been
159 satisfactorily answered.

An objection, however, is taken to this claim, which was not urged heretofore, either in this or the Supreme Court. It is claimed that Cambuston was a citizen of France and therefore incapable of taking a grant.

This objection is urged—

1. To show that even if all the preliminary steps had been taken and the grant in all other respects regularly made the governor exceeded his powers.

2. That the fact that the grantee was a foreigner, and notoriously known to be such, would certainly have been made known to the governor had the usual informes with regard to the qualifications of the applicant, etc., been asked for and obtained, and that the fact that he was so known to be a foreigner is a strong circumstance to show that the grant was executed without the usual informes having been asked for.

3. That the issuing of so large a grant to a foreigner at that time and under the circumstances of its alleged execution shows the want of that bona fides on the part of the governor in the exercise of his authority which, as also the existence of his authority to make the
160 grant, the Supreme Court has declared "should in this and similar cases be inquired into and scrutinized with great care."

The evidence which is relied on to prove that Cambuston was an unnaturalized foreigner is the following:

1st. The deposition of Morenhout, taken by the claimant. This witness testifies that when he arrived here as French consul he obtained from his predecessor a description of the French residents of the country, and was told that Cambuston had a grant, etc.; and that subsequently Cambuston deposited his papers in the consulate.

This witness does not expressly state that Cambuston was a Frenchman, but it is clearly to be inferred from his account that he first obtained information about his affairs as such, and the subsequent reception of the papers in the consulate can hardly be accounted for on any other hypothesis.

2d. Col. Stevenson, also a witness for the claimant, states that Cambuston spoke French and Spanish, but no English.

3d. It appears from the archives that on the 8th August, 1844, a dispatch was sent by Bocanegra, minister of relations of Mexico, to the governor of California, inclosing a communication from the French minister at Mexico, in which the latter complains that Henry Cam-
161 buston, a Frenchman, established in Monterey, had been driven from California; that Cambuston protested his innocence. The minister, therefore, remonstrated against such arbitrary conduct, and asks that he be permitted to return, etc. It also appears that on the 29th Jan., 1846, Manuel Castro, then prefect of Monterey, transmitted

a communication to the secretary of the department containing an account of a quarrel which had occurred between himself and Henry Cambuston, a teacher in the public school, and inclosing copies of communications relative thereto between Louis Gasquet, acting French consul, and José Castro, commandant-general, and also a copy of the proceedings had against Cambuston by Manuel Castro. In all these proceedings Cambuston is spoken of both by the French consul and General Castro as a French citizen. It does not, however, appear whether the interference and protection of the French minister in 1844 or that of the French consul in 1846 were claimed by Cambuston.

As this objection was for the first time taken in the brief filed by the United States, the case was opened that the United States might adduce the testimony above referred to from the archives, and that the
162 claimant might show, if possible, either that he was not a foreigner or had been naturalized. No proof on these last points has been submitted by him. In the briefs filed on the part of the claimant, it is not urged that as a matter of fact Cambuston is not a Frenchman. He resides in this country, and is not unfrequently in this city. He is known to a large number of people, as is shown by the witnesses whom he has himself produced. If he were not a Frenchman, Morenhout, Col. Stevenson, and many others could readily have so stated. The absence, therefore, of any attempt to repel the presumptions arising from the proofs above cited, and even of any denial of their truth, justifies me in treating those proofs as establishing that Cambuston was a French citizen. Assuming, then, that he was a foreigner, and not naturalized, we proceed to inquire whether he could take lands by grant in colonization, and whether in attempting to grant lands to him Gov. Pico exceeded his authority.

By the law of 1824, foreigners were not only permitted but invited to settle, as colonists, on the vacant lands of the Mexican republic.

But the circumstances connected with the settlement of Texas, or other considerations, induced the Government, in 1836, to adopt a
163 more jealous and exclusive policy.

By the constitutional laws of Dec. 29th of that year, it is provided "that foreigners cannot acquire real estate in the republic unless they have been naturalized and married to a Mexican woman, and have otherwise complied with the laws relating to such acquisitions. The acquisitions of colonists will be subject to special laws of colonization."

Under this provision it might perhaps have been doubtful whether it was intended merely to prohibit the acquisition of lands by foreigners in the ordinary modes, leaving their rights to acquire lands as colonists to be governed by the then existing special laws, or whether it was intended to make the prohibition general, leaving their rights as colonists to be fixed by future special laws.

But we have abundant evidence of the construction given to this provision by the authorities of California. In 1843, Isaac J. Sparks, a native of the United States, but a naturalized Mexican, applied for a grant of land, and the usual informes were ordered. The alcalde of Santa Barbara reported that Sparks "was married in the United States,
164 which is a good reason why he cannot marry with any one in this country." And Dominguez, the prefect, reported that "as the law in speaking of strangers prohibits them from acquiring real estate in the republic unless naturalized therein, married with a Mexican, etc., your excellency will order in the matter what may be proper."

On these reports Micheltorena orders the proceedings to be suspended

"until the arrival of the new constitution," viz, that of 1842, which will presently be noticed.

In December of the same year Sparks renewed his application, whereon Jimeno, the secretary, reported:

"The party interested has not acquired the land he petitions for, on account of his not being married to a Mexican, as required by the constitution of 1836, and although by a subsequent decree foreigners were allowed to acquire real estate in the republic, exceptions are made in the frontier departments, which have been subjected to regulations which have not yet been received. I believe it would be an act of justice to grant the land to the petitioner, as he is honorable and industrious, and a naturalized citizen."

The land was accordingly granted, but without the power to sell.

165 In the case of Sansevain, a French citizen, who applied for a grant, Jimeno reported as follows: "Don Pedro Sansevain is not naturalized, an indispensible requisite in order to acquire property in the territory, but he may be permitted to cut wood upon the land until he is naturalized and can receive the title he desires."

Sansevain was accordingly naturalized, and on the 21st April, 1846, renewed his application as a Mexican, by naturalization, to Gov. Pico, by whom the land was granted on the 21st of April, 1846, about one month before the date of the grant to Cambuston. In the decree of concession and the final title, the fact is carefully set forth that the grantee is a Mexican citizen by naturalization.

I am not aware of any case in which the espediente shows that this "indispensable requisite," as it is called by Jimemo, was dispensed with. It is surprising that the first and only instance of the kind should be that of Cambuston, who two years before had been driven from the country, and a few months before had been involved in a long and acrimonious dispute with the authorities, in which the representative of his

166 nation felt himself called on to interfere.

The subsequent decree to which Micheltorena and Jimeno allude is undoubtedly that of March, 1842.

By this law foreigners, not citizens, were authorized to acquire real property in the republic; but, by art. 9, it was enacted that "those arrangements should not include the departments on the frontier and bordering on other nations, in regard to which special laws of colonization will be enacted, without the power to foreigners to ever acquire property in them without the express license of the supreme government." (Rockwell, p. 612.)

It is suggested that this was a restriction intended to be made in future laws of colonization, and not a limitation in the then existing laws.

But even if this be so, the latest existing law was that of 1836, which, we have seen, denied all right to foreigners to acquire lands unless naturalized and married to a Mexican; and it is impossible to suppose that Santa Anna, when by his edict of 1842 he removed these disabilities as to the central departments, and declared that the frontier depart-

167 ments were not included in the new arrangements, but with respect to them special colonization laws should be enacted, under which foreigners should not acquire lands without the express license of the supreme government, intended that the ancient and liberal law of 1824 which offered lands to all foreigners, without the license of the supreme government, should remain unrepealed. The fact that future special laws of colonization containing this restriction were promised, shows that he, like Micheltorena, Jimeno, and the other authorities of

California, regarded the law of 1824 as modified or repealed, in this respect, by the law 1836.

But even if, contrary to the construction given to it by Jimeno, we construe the law of 1836 as not repealing the colonization laws of 1824, that repeal must, nevertheless, be deemed to have been effected by the 12th article of the law of 1842.

That article provides that "Foreigners cannot acquire royal or public lands, in all the departments of the republic, without contracting for them with the government, which possesses this right, as representing the domain of the Mexican nation." (Rockwell, p. 613.)

168 It must, therefore, be concluded that at the time the grant to Cambuston purports to have been issued, he had, if an unnaturalized foreigner, no capacity to take lands without the express license of the supreme government.

It is urged, however, that the court is bound to presume that the governor did not exceed his authority; and, therefore, it must presume either that Cambuston was naturalized and that the governor was duly apprised of the fact by the preliminary proceedings, or else that the express license of the supreme government was obtained.

It is undoubtedly true, as a general principle, that the public acts of public officers purporting to be exercised in an official capacity and by public authority shall, in the absence of proof to the contrary, be presumed to have been done in the exercise of a legitimate and not a usurped authority. (United States v. Arredondo, 6 Pet., 727.)

The acts, therefore, of a public officer, to whom a public duty is assigned, within the sphere of that duty are, prima facie, taken to
169 be within his power. "He who would controvert a grant executed by the lawful authority, with all the solemnities required by law, takes upon himself the burden of showing that the officer transcended the powers conferred upon him, or that the transaction is tainted with fraud." (United States v. Clarke, 8 Pet., 453.)

These principles are declared by M'r Ch. J. Marshall "to be too deeply founded in reason and law ever to be successfully assailed."

The justice of this remark is obvious. As by hypothesis the only evidence of the existence or non-existence of the power in the officer is the fact that he exercised it, the court is compelled to adopt one of two presumptions—either that he acted legally or illegally. In the absence of all proof to the contrary, it could not rationally be presumed that he acted illegally. The other alternative must, therefore, be accepted.

But the force of this presumption must, from the nature of things, vary with the circumstances. Where the officer, as a governor or viceroy, appointed by the King, dependent on his favor, and liable to be punished for disobedience; where the act in question is one of a series by which he repeatedly and notoriously assumed the power in
170 question; where no assignable motive appears which could have induced him, in the particular case, to exercise an usurped authority, nor any circumstances either in his own situation or that of the grantee, or in the mode of exercising his power, which suggest doubts as to the bona fides of the transaction, the presumption we are considering may be regarded as almost conclusive.

But where, as in this case, the grant purports to have been made by a governor within a few weeks of the time when the government of the territory passed from his hands, and "during the very heat and conflict of the struggle in which his power was overthrown;" where the evidence that the formalities required by law were observed is imperfect and unsatisfactory, and rests wholly in parol; where it does not

appear that any preliminary inquiries were made as to the point on which he is supposed to have exceeded his authority; and where the situation of the granting officer, and the mode in which he exercised his authority in other cases, at or about the period when the grant purports to have been issued, suggest the suspicion of carelessness, if not recklessness, in the exercise of his powers;

171 Under all these circumstances, it must be admitted that the presumption we are considering loses much of its force, if it be not entirely repelled

It is declared by the Supreme Court in this case that this grant, purporting to have been made under the circumstances above referred to, and all others similarly situated, should be scrutinized with great care, both as to the authority of the governor to make them and the bona fides of its exercise.

But how can such scrutiny be exercised if we apply to them a blind and technical presumption of legality, raised by the mere fact that the governor signed the grant, and treat that fact as satisfactory evidence of the governor's authority, unless the United States produce proofs to the contrary in their own nature impossible to be furnished?

The United States have shown that the governors of the frontier departments had no power to grant lands to foreigners; certainly not without the express license of the supreme government, if we adopt the construction of the law of 1842, most favorable to the claimant.

They have also shown, I think satisfactorily, that the grantee was a Frenchman, and that within a few months of the date of the

172 grant his rights as such were vigorously asserted by the representative of his nation. That he was by that officer, and by the California authorities, treated and recognized as such throughout a protracted proceeding; and, as this proceeding was taken for his benefit, it may be reasonably inferred to have been at his instance, and he should be regarded as having asserted his status as a French citizen, and as having demanded protection of the representative of his country as such.

No informes or preliminary inquiries are proven which show that it was ascertained by the governor that the grantee had been naturalized; nor is he, as was usual and almost invariable in similar cases, declared to be such in the grant.

If, then, this proof be not sufficient to overcome the presumption arising from the fact that the governor signed the grant, in what way can it be met?

The United States cannot prove the negative fact that the grantee was not naturalized. They may raise, as they have done, a strong presumption to that effect, by showing that he was of French birth, and that rights were claimed for him as a French citizen a few months

173 previous to the grant. But as the forms of the proceeding to obtain naturalization were exceedingly simple, and they could be taken before any magistrate, it is impossible to prove that a particular person was not naturalized.

It seems to me clear, therefore, that in such a case the foreigner should prove the affirmative fact that he was naturalized, a fact peculiarly within his knowledge, and the means of proving which are easy. No such proof has been offered in this case.

The same observations apply to the other presumption, in which the court is asked to indulge, viz: that the grant was expressly authorized by the supreme government. The very state of facts for which the United States contend—viz, that no license was obtained—supposes

affirmative proof that it was not given to be unattainable. For all that could be shown would be that no such license appears of record in the archives or elsewhere, and such is the proof in this case.

Gov. Pico, who was a witness for the claimant, makes no mention of any such license, and as it would have been the solitary instance of the kind which, so far as I am informed, ever occurred in the history
174 of California, the fact could hardly have escaped his memory, nor would the claimant have omitted to establish it by the testimony of the governor.

Besides, it is impos'ible to suppose that so protracted and troublesome a proceeding as demanding and obtaining the license of the supreme government would have been resorted to when the applicant could, without delay or difficulty, have been naturalized by an ordinary magistrate.

The idea, therefore, that such a license may have been obtained appears to me rather an ingenious suggestion of counsel than a legal presumption which a court should indulge.

But the case of the United States v. Reading (18 How., 9) is relied on as an authority decisive of this case.

In that case the grant contained the usual recital, "that the proper proceedings and investigations had been previously complied with according to the provisions of the laws, &c.," in the form invariably adopted in all grants.

"Now this," says the Supreme , "is not merely the language of clerical formality, though it might be the same from usage in like
175 cases, but it is a declaration of the governor's official and judicial conscience, that his power to make the grant has been used in a fit case," etc.

"We consider it conclusive of the fact of the petitioner's naturalization, precluding all other inquiries about it, in our consideration of this case by the record."

With reference to that case it is to be observed—

1st. That the grant to Maj. Reading states "that he is a Mexican by naturalization," which is not stated in the grant to Cambuston; and it further appeared from the espediente that the usual informes were obtained and the petitioner reported by Jimeno to be a proper person for the governor's favor.

2d. So far as the principles laid down by the Supreme Court in the extract above cited can be supposed to apply to this case they must be taken as overruled by its more recent decision in the case we are now considering.

"It is true," say the Supreme Court, "the document recites that a petition was presented, and that the customary investigations had been made in respect to the application. But this cannot be regarded as conclusive or even satisfactory evidence of these facts when the
176 question is raised whether or not the alleged grant is made in conformity with the requirements of law; in other words, whether the preliminary conditions had been complied with which enabled the governor in the particular case to make the grant." (United States v. Cambuston, 20 How., p. 68.)

The court then proceeds to distinguish between the Florida and Louisiana cases and those in California. In the first the existence of the power to grant and the regularity of its exercise were presumed from the facts of the habitual granting of lands by certain officers and the customary mode adopted in making them. In the California cases the power is expressly conferred and the manner of its exercise prescribed

by law. and therefor' no presumptions are admissible. But the court must look to the law for the power to make the grant and the manner of its exercise.

If, then, the court refused to treat the recital that the customary investigations had been had, etc., as conclusive or even satisfactory evidence of the fact, but remanded the case that such proof might be given, it is difficult to perceive how this court can treat the same recital as proving not only that the investigations were made, but that they
177 resulted favorably to the petitioner, and that he was ascertained to have been naturalized, especially as he is not stated in the grant to have been a citizen, either by birth or naturalization.

In the case of Reading, the informe of Jimeno, and the statement in the grant that he was a naturalized citizen, may well be regarded as a judicial ascertainment of the fact, precluding all subsequent inquiries upon the subject.

But in this case no informes are produced. We have only the statement of Moreno that they existed in a' espediente, which is lost, and which no other witness ever saw. As to its contents we are wholly uninformed, and the grant does not contain the result of the investigation, for, contrary to the almost invariable practice, the political status of the grantee is not mentioned.

One other argument urged by the counsel for the claimant remains to be noticed.

It is insisted that the prohibition against foreigners holding lands is not restrictive upon the power of the governor to remove the disability, and a grant by him operates as an enfranchisement.

In support of this proposition various cases are cited. 20 Johns., 706; 7 Id., 290; 9 Id., 362; 5 Cowen, 397; 2 Wend., 133.

178 But the distinction between those cases and the case at bar is obvious.

In the decisions referred to it is held that where the legislature directed a grant to issue to a particular person by name, or to a class of persons of which he was one, and a patent was executed to him in pursuance of the statute, it could not be objected that other and general laws disabled him from taking. The same sovereign authority which created the disability was competent to remove it, and the law authorizing the patent was held to operate as a repeal pro tanto of the previous general laws. In such cases the question is clearly one of intention, not of power. But the governor of California had no similar power. He was a subordinate agent with powers conferred and limited by law. To say that he had authority to remove a disability created by law is to say that he was above and not subject to the law, and to affirm, in effect, that a violation of law by an officer of government operates as a repeal of it.

I have thus, in obedience to the injunction of the Supreme Court, inquired into and scrutinized this case with great care as to the authority of the governor to make the grant and the bona fides of its exercise.

179 The result of that inquiry is that the grantee was a foreigner, and does not appear to have been naturalized; nor is it shown that the express license of the supreme government was obtained. The governor, therefore, had no authority to make the grant.

The claim must be rejected.

Filed November 9, 1859.

W. H. CHEVERS, *Clerk.*

180 *Notice to clerk that claimant is alone authorized to move for an appeal.*

United States district court for the northern district of California.

UNITED STATES
vs.
HENRY CAMBUSTON.

SIR: Take notice that no person whatever is authorized by me to move for an appeal in this case from the late decision of the honorable district judge, and that if an appeal is moved for I shall be present in court and ask for it myself.

San Francisco, November 11th, 1859.

H. CAMBUSTON.

To WILLIAM H. CHEVERS, Esq.,
Clerk of the United States District Court for the Northern District of California.

(Endorsed:) Filed Nov. 11, 1859. W. H. Chevers, clerk.

181 *Decree rejecting claim.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday the twelfth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
HENRY CAMBUSTON. } No. 349. L. C. 511.

This cause having been remanded by the Supreme Court of the United States to this court for further proceedings, to be had therein, in accordance with the mandate of the said Supreme Court in the said cause, filed in the office of the clerk of this court, on the 5th day of May, 1859, and having come on to be further heard upon the transcript of the record of the proceedings in the said cause of the board of commissioners to ascertain and settle the private land-claims in the State of California, and upon the further evidence taken in this court, in pursuance of the said mandate of the Supreme Court; and counsel for
182 the respective parties having been heard, and due deliberation had in the premises, and the court being of opinion that the claim of the said Henry Cambuston is not a good and valid claim, it is now thereby ordered, adjudged, and decreed that the claim of the said Henry Cambuston is invalid, and the same be and is hereby rejected.

OGDEN HOFFMAN,
Dis't Judge.

(Endorsed:) Filed November 12th, 1859. W. H. Chevers, clerk.

Affidavit of L. B. Mizner for a rehearing.

In the U. S. dist. court for the northern district of California.

THE UNITED STATES
vs.
HENRY CAMBUSTON.

Lansing B. Mizner, a party in interest in the above-entitled cause, being duly sworn, says: That whereas the said cause having been re-

manded by the Supreme Court of the United States to this court for further evidence, (20 Howard, page 59,) and that said evidence
183 having been had, the said cause was resubmitted to this court on the 12th day of September last. That on the 1st day of November following, under an intimation from this court that the case would be opened, defendant Cambuston, by his attorney, stipulated to admit as evidence in said case, subject to all legal exceptions, certain documents from the Mexican archives, tending to show that prior to the date of the grant in this case that Cambuston was claimed as a French citizen by the representation of that nation at Monterey, Cal'a.

That in nine days thereafter, that is to say, on the 9th day of November last, after the said stipulation, and the case had been finally closed, the said claim was rejected by this court on the ground that the claimant was an alien.

That there is no evidence in the recored that the said claimant Cambuston was not a citizen of Mexico on the 23d day of May, 1846, the date of the grant in question. The archives documents aforesaid allude to a time many months anterior to the date of said grant.

That said claimant took no steps towards proving that he was a Mexican citizen at the date of his grant, for the following reasons:
184 First. That he did not consider that there was any evidence in the record showing that he was not a Mexican citizen at the date of his grant, to wit, the 23rd May, 1846.

Second. That the fact of the grant having been made to him, and the abundant testimony in the record, showing that he, Cambuston, had held several important offices under the Mexican government, all raised the presumption that he was a Mexican citizen, and a proper person to take land.

Third. That the said claimant was exceedingly anxious to have his said claim passed upon by this court at a day sufficiently early to enable him to have his appeal in Washington City in time for the December term, 1859, which could not have been done had the claimant taken a reasonable time to procure testimony; as from the 1st of November, the date of the stipulation admitting the archives testimony, there was only six or eight days left in which to decide the case, make out the transcript, and mail it by the overland mail so it could reach Washington in time to go on the December docket. The reason why the claimant was in such haste, after having waited seven or
185 eight years, was that his entire interest in the said grant of land was mortgaged at a rate of interest which would soon consume it unless he could obtain an early decision in his favor from the U. S. Supreme Court, which rate of interest has since been reduced and the time of payment extended.

That the validity of the title in every other respect has been incontrovertably proven, and the question of alienage was not raised by the U. S. Supreme Court.

That the decision of Judge Hoffman rejecting the claim was within a few days of the end of the term, and took the defendant by surprise; that he is now able and willing to procure the testimony necessary to remove the objection made in the decree.

That since said time, and before the end of the said term, it was ascertained that the Mexican law or decree of Santa Anna, of August 12th, 1842, provided as follows:

"That all persons being natives of other nations who may have been admitted by the government into the military service, whether the army or navy of the republic, shall be considered as Mexicans, and conse-

quently all the rights and obligations of Mexicans attach to
186 them." (Lara decretos, tomo 2, p. 40.)

That the said claimant is willing and able to prove by numerous witnesses and the Mexican archives that he served in the army of Mexico with honor to himself and the nation, and that he held many responsible offices under the Mexican rule, among them the office of surveyor-general of California, which will appear from the archives, all of which, according to the foregoing law, naturalized him.

That affiant is informed by his counsel that notice of a motion for a rehearing was given to the U. S. district attorney before the end of said term. The departure of the presiding judge from the State a few days after the rendition of the decree in this case prevented the motion from being made.

To the end that justice may be done, and that a worthy person may not be deprived of his rights by mistake and surprise, defendant prays that a rehearing be granted him.

L. B. MIZNER.

Sworn to and subscribed this 24th February, 1860, before me.

W. H. CHEVERS,
U. S. Com.

187 I hereby accept service of the within paper this 24th day of February, A. D. 1860.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

(Endorsed:) Filed Feb'ry 24, 1860. W. H. Chevers, clerk.

Stipulation for rehearing.

THE UNITED STATES }
vs. }
HENRY CAMBUSTON. }

It is hereby stipulated that Tully R. Wise, acting U. S. district attorney, waived written notice to him of a motion to be made for a new trial during the term of the United States district court ending the first Monday of December last, and that he considered a verbal notice of intention to move as sufficient to him and then given to him, the said Wise.

It is further stipulated that if the said Henry Cambuston now has a right to have the said motion heard it shall not be prejudiced by delay until the return of the Hon. Ogden Hoffman.

188 San Francisco, California, this 13th day of March, A. D. 1860.

TULLY R. WISE,
Acting U. S. Dist. Att'y.
S. HEYDENFELDT,
For Claimant.

(Endorsed:) Filed March 13th, 1860. W. H. Chevers, clerk.

Petition of executrix to be made party claimant, and order thereon.

To the honorable the district court of the United States for the district of California:

The petition of Gabriela Soberanes de Cambuston shows:
That she is the widow of Henry Cambuston, who died *in* January

22d, 1869. Petitioner on May 3d, 1869, was by the probate court of the county of San Francisco appointed and was afterwards qualified the executrix of his estate. She prays a copy of her letters of executorship hereto annexed be taken as part hereof, and that she be permitted to become the party claimant of the land described in the suit of Henry Cambuston versus The U. S., claiming seven leagues of land.

S. HEYDENFELDT,
Att'y for Claimant.

189 STATE OF CALIFORNIA,
County of San Francisco:

Personally appeared before me Gabriela Soberanes de Cambuston, who, being duly sworn, deposes that she has had read to her the foregoing petition, and that the same has been translated to her, and that she knows the contents thereof. That the same is true to her knowledge.

GABRIELA SOBERANES DE CAMBUSTON.

Subscribed and sworn to before me, after having translated to deponent into the Spanish language, the foregoing instrument, this 2nd day of April, A. D. 1875.

[SEAL.]

SAM'L HERMANN,
Notary Public.

Letters testamentary.

STATE OF CALIFORNIA,
City and County of San Francisco:

(In probate court.)

[50 c'ts int. rev. stamp. A. J. J., dep. cl'k. May 3, 1869. 50 c'ts int. rev. stamp. A. J. J., dep. cl'k. May 3, 1869. 50 c'ts int. rev. stamp. A. J., dep. cl'k. May 3, 1869.]

The last will of Henry Cambuston, deceased, a copy of which is hereunto annexed, having been proved and recorded in the probate court of the city and county of San Francisco, Gabriela Soberanes de Cam-
190 buston, who is named therein, is hereby appointed executrix.

Witness Washington Bartlett, clerk of the probate court of the { SEAL OF COURT. } city and county of San Francisco, with the seal of the court affixed, the third day of May, A. D. 1869.

By order of the court.

WASHINGTON BARTLETT, *Clerk.*
By A. J. JEGBERS, *Deputy.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I do solemnly swear that I will support the Constitution of the United States, and the constitution of the State of California; that I will faithfully discharge the duties of executrix of the estate of Henry Cambuston, deceased, according to law.

GABRIELA S. CAMBUSTON.

Subscribed and sworn to before me this third day of May, 1869.

A. J. JEGBERS,
Deputy Clerk of the Probate Court of the City and County of San Francisco.

191 Office of the county clerk of the city and county of San Francisco, ss:

I, William Harvey, county clerk of the city and county of San Francisco, and ex-officio clerk of the probate court thereof, do hereby certify the foregoing to be a full, true, and correct copy of letters testamentary issued to Gabriela Soberanes de Cambuston upon the estate of Henry Cambuston, deceased, of record and on file in my office, and which have not been revoked.

Witness my hand and the seal of said court this first day of April, A. D. 1875.

[SEAL.] WILLIAM HARVEY, *Clerk*,
By T. BUIGES, *Deputy Clerk*.

Order on petition.

On reading and filing the petition of Gabriela Soberanes de Cambuston, praying to be made party claimant in the case of Henry Cambuston vs. The United States, and it appearing that said Cambuston has deceased, and the said Gabriela is the executrix of his estate, it is ordered that she be substituted as party claimant, and that the proceedings in said case be carried on in her name as such executrix.

Dated San Francisco, April 3rd, 1875.

E. W. HILLYER,
District Judge.

192 (Endorsed:) Filed April 3rd, A. D. 1875. Edw'd B. Cotter, clerk, by A. G. Grimwood, deputy clerk.

Affidavit of Gabriela Soberanes de Cambuston, and translation of same.

Estado de California, ciudad y condado de San Francisco.

Gabriela Soberanes de Cambuston con juramento déce lo que sigua, á sober: Me llamo Gabriela Soberanes. Soy viuda del difunto Enrique Cambuston. Nasi en California, en la parte que se conoce abora como el condado de Monterey en California. Mi marido recibió del gobernador de la provincia de la Alta California la concesion de once leguas de tierra, cuya confirmacion reclamó al nuevo gobierno. Esta tierra está situada cerca del rio Sacramento. Mi marido fué gefe del sistema de escuelas establecidas en Monterey adonde yo naci. Cuando el nuevo gobierno pronunció la nulidad de su concesion, mi marido se puso muy triste y desesperado. Fué, me parece, como un año despues en el año 1861, que, aturdido de que el nuevo gobierno le quitose su
193 tierra, y debiendo deudos contra todos mientras creia firmemente ser dueño de ella, se desominó, y recurio á las bebidas estimulantes á tal grado que se olvidó de sus debenes. Fué andando de mal en peor en los años siguientes hasta perder enteramente su entendimiento. Yo no tenia medios. Algun dinero cobré enseñando mi idioma, en una escuelita que comenzé, pero apenas bastante para vivir, con todos mis esfuerzos. Siguió la aberracion mental de mi marido durante ocho años, cuando en fin me fué perdido yendo á la casa de los locos en Stockton adonde murió en el año 1869.

La congoja que sintió cuando el nuevo gobierno le quitó su tierra, estoy segura la quitó la razon. Yo no tenia ni bastante dinero, ni amigos para adelantar este reclamo, hasta muy poco hace.

No sé hablar leer ni escribir Ingles. Tampo. sabia mi marido.

GABRIELA SOBERANES DE CAMBUSTON.

Subscribed and sworn to this 2nd day of April, A. D. 1875, before me

[SEAL.] SAM'L HERMANN,
Notary Public.

194 *Translation of M'r's Cambuston's affidavit.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Gabriela Soberanes de Cambuston, being duly sworn, deposes as follows, to wit:

My name is Gabriela Soberanes de Cambuston. I am the widow of the late Henry Cambuston. I am a native Californian, having been born in what is now called the county of Monterey, in California.

My husband received from the governor of the province of Upper California the grant of the eleven leagues of land claimed by him of the new government. The land is near the banks of the Sacramento River. My husband was chief of the school system of Monterey, my native place. When the new government said his grant was bad, he soon became very despondent and sad. About one year afterward, I think in 1861, being so much astonished that the new government could take his land from him, and having many debts he had made when he thought he surely had the land, he lost his heart, and he began to stimulate himself so much that he forgot his duties. He went on
195 worse and worse in each of the years until his mind left him. I had no money. I obtained a little by a small school for my native language, which I opened, but I had very hard work to get enough.

My husband went on losing his mind during eight years, and then I lost him, for he was taken to the mad-house in Stockton, where he died in 1869.

I am sure the grief which overtook him when the new government said he had no land took away his reason.

I could not get enough money or friends to make this case go forward until quite lately. I cannot speak, or read, or write the English language, nor could my husband.

(Endorsed:) Filed April 3rd, A. D. 1875. Edw'd B. Cotter, clerk, by A. D. Grimwood, deputy clerk.

Notice for new trial.

In the district court of the United States for the district of California.

GABRIELA SOBERANES DE CAMBUSTON, executrix of the estate of Henry Cambuston, *vs.* UNITED STATES.	Claiming eleven leagues of land.

196 And now comes the claimant, and, pursuant to the stipulation heretofore filed, substituting a verbal for a written notice of motion for a new trial, the claimant asks that a new trial be granted herein, and that the decree of rejection of the claim may be reversed.

S. HEYDENFELDT,
Att'y for Claimant.

(Endorsed:) Filed April 3rd, A. D. 1875. Edw'd B. Cotter, clerk, by A. D. Grimwood, deputy clerk.

Order denying motion for new trial.

At a stated term of the district court of the United States of America for the district of California, held at the court-room, in the city of San

Francisco, on Saturday, the 3d day of April, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable E. W. Hillyer, U. S. district judge.

THE UNITED STATES
vs.
GABRIELA SOBERANES DE CAMBUSTON, EXECutrix of Henry Cambuston, deceased.
} Land case. No. 349. N. D.

197 In this case the claimant's motion for a new trial, and for a reversal of the decree heretofore entered rejecting the claim herein, was this day brought on for hearing. Solomon Heydenfeldt, esquire, appeared as counsel for claimant, and John M. Coghlan, esquire, assistant U. S. attorney, appeared on behalf of the United States. M'r Heydenfeldt, on behalf of claimant, presented an affidavit in the Spanish language of the claimant Gabriela, a translation of which was ordered by the court to be made; and a translation thereof being thereupon made and submitted, the same was duly approved by the court, whereupon the same were offered and received in evidence; and then the claimant's said motion was duly argued by the respective counsel, and submitted to the court for consideration and decision; and due consideration having been thereon had, it is by the court ordered that the said motion for new trial and for a reversal of the decree rejecting the claim herein be, and the same is hereby, denied.

(Endorsed:) Filed April 3rd, A. D. 1875. Edward B. Cotter, clerk.

198 *Order allowing appeal.*

In the district court of the United States for the district of California.

GABRIELA SOBERANES DE CAMBUSTON, EX.,
vs.
UNITED STATES.

On motion of claimant's attorney, it is hereby ordered that an appeal from the final decree, and from the order denying claimant's motion for a new trial herein rendered, be allowed to the Supreme Court of the United States, and that a copy of all the proceedings and documents herein be transmitted to the clerk of that court.

E. W. HILLYER,
U. S. District Judge.

SAN FRANCISCO, *April* 3, 1875.

(Endorsed:) Filed April 3rd, A. D. 1875. Edw'd B. Cotter, clerk, by A. D. Grimwood, deputy clerk.

199 *Citation on appeal.*

In the district court of the United States for the district of California.

GABIELA SOBERANES DE CAMBUSTON
vs.
UNITED STATES.

To the United States of America, greeting:

You are hereby admonished to be and appear at the Supreme Court of the United States to be holden at Washington, District of Columbia, on the second Monday of October next, pursuant to an appeal taken and filed in the clerk's office of the district court of the United States

for the district of California, on the third day April, 1875, in the above-entitled case, to show cause, if any there be, why the decree rejecting said claim and denying the motion for a new trial should not be corrected, and justice done to the parties in that behalf.

E. W. HILLYER,
U. S. District Judge.

SAN FRANCISCO, *April* 3, 1875.

200 (Endorsed:) Due service of a copy of within admitted this 3rd day of April, 1875.

WALTER VAN DYKE,
U. S. Att'y, A. P. V.

Filed April 3rd, A. D. 1875.

EDW'D B. COTTER,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

201 UNITED STATES OF AMERICA,
District of California, ss:

I, Edward B. Cotter, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing and hereunto annexed written pages, numbered from one to two hundred, both inclusive, contain a full, true, and correct transcript of the proceedings in the cause entitled The United States vs. Gabriela Soberanes de Cambuston, executrix, &c, northern district, No. 349.

Witness my hand and the seal of said United States district court, at San Francisco, this fifteenth day of July, A. D. one thousand eight hundred and seventy-five.

[SEAL.] EDW'D B. COTTER,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

202 UNITED STATES DISTRICT COURT,
District of California:

THE UNITED STATES
vs.
GABRIELA SOBERANES DE CAMBUSTON, executrix, &c. } No. 349.

I, Edward B. Cotter, clerk of the district court of the United States for the district of California, do hereby certify that no photograph is annexed to the stipulation filed in the above-entitled case, on the 16th day of September, A. D. 1859, and that no photograph of any character or description is now among the files of said case.

In witness whereof I have hereunto set my hand and affixed the seal of said United States district court this 17th day of July, A. D. 1875.

[SEAL.] EDW'D B. COTTER,
Clerk,
By P. D. GRIMWOOD,
Deputy Clerk.

(Indorsement on cover:) No. 88. Gabriela Soberanes de Cambuston, executrix of Henry Cambuston, deceased, appellant, vs. The United States. California D. C. U. S. Filed 26th July, 1875.

Francisco, on Saturday, the 3d day of April, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable E. W. Hillyer, U. S. district judge.

THE UNITED STATES
vs.
GABRIELA SOBERANES DE CAMBUSTON, EXECUTRIX of Henry Cambuston, deceased.
} Land case. No. 349. N. D.

197 In this case the claimant's motion for a new trial, and for a reversal of the decree heretofore entered rejecting the claim herein, was this day brought on for hearing. Solomon Heydenfeldt, esquire, appeared as counsel for claimant, and John M. Coghlan, esquire, assistant U. S. attorney, appeared on behalf of the United States. M'r Heydenfeldt, on behalf of claimant, presented an affidavit in the Spanish language of the claimant Gabriela, a translation of which was ordered by the court to be made; and a translation thereof being thereupon made and submitted, the same was duly approved by the court, whereupon the same were offered and received in evidence; and then the claimant's said motion was duly argued by the respective counsel, and submitted to the court for consideration and decision; and due consideration having been thereon had, it is by the court ordered that the said motion for new trial and for a reversal of the decree rejecting the claim herein be, and the same is hereby, denied.

(Endorsed:) Filed April 3rd, A. D. 1875. Edward B. Cotter, clerk.

198 *Order allowing appeal.*

In the district court of the United States for the district of California.

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E. W. HILLYER,
U. S. District Judge.

SAN FRANCISCO, *April* 3, 1875.

(Endorsed:) Filed April 3rd, A. D. 1875. Edw'd B. Cotter, clerk, by A. D. Grimwood, deputy clerk.

199 *Citation on appeal.*

In the district court of the United States for the district of California.

GABIELA SOBERANES DE CAMBUSTON
vs.
UNITED STATES.

To the United States of America, greeting:

You are hereby admonished to be and appear at the Supreme Court of the United States to be holden at Washington, District of Columbia, on the second Monday of October next, pursuant to an appeal taken and filed in the clerk's office of the district court of the United States

for the district of California, on the third day April, 1875, in the above-entitled case, to show cause, if any there be, why the decree rejecting said claim and denying the motion for a new trial should not be corrected, and justice done to the parties in that behalf.

E. W. HILLYER,
U. S. District Judge.

SAN FRANCISCO, *April* 3, 1875.

200 (Endorsed:) Due service of a copy of within admitted this 3rd day of April, 1875.

WALTER VAN DYKE,
U. S. Att'y, A. P. V.

Filed April 3rd, A. D. 1875.

EDW'D B. COTTER,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

201 UNITED STATES OF AMERICA,
District of California, ss:

I, Edward B. Cotter, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing and hereunto annexed written pages, numbered from one to two hundred, both inclusive, contain a full, true, and correct transcript of the proceedings in the cause entitled The United States vs. Gabriela Soberanes de Cambuston, executrix, &c, northern district, No. 349.

Witness my hand and the seal of said United States district court, at San Francisco, this fifteenth day of July, A. D. one thousand eight hundred and seventy-five.

[SEAL.]

EDW'D B. COTTER,
Clerk,
By A. D. GRIMWOOD,
Deputy Clerk.

202 UNITED STATES DISTRICT COURT,
District of California:

THE UNITED STATES
vs.
GABRIELA SOBERANES DE CAMBUSTON, executrix, &c. } No. 349.

I, Edward B. Cotter, clerk of the district court of the United States for the district of California, do hereby certify that no photograph is annexed to the stipulation filed in the above-entitled case, on the 16th day of September, A. D. 1859, and that no photograph of any character or description is now among the files of said case.

In witness whereof I have hereunto set my hand and affixed the seal of said United States district court this 17th day of July, A. D. 1875.

[SEAL.]

EDW'D B. COTTER,
Clerk,
By P. D. GRIMWOOD,
Deputy Clerk.

(Indorsement on cover:) No. 88. Gabriela Soberanes de Cambuston, executrix of Henry Cambuston, deceased, appellant, vs. The United States. California D. C. U. S. Filed 26th July, 1875.

No. 88.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

GABRIELA SOBERANES DE CAMBUSTON, Executrix, etc.,

VS.

THE UNITED STATES.

Brief for Appellant.

EDMOND L. GOOLD,
Counsel.

IN THE SUPREME COURT

OF THE

UNITED STATES.

GABRIELA SOBERANES DE CAMBUSTON, EXECUTRIX, ETC.,

vs.

THE UNITED STATES.

No. 88.

Brief for Appellant.

This is a claim of confirmation of a grant of tract of land made by Governor Pio Pico to Henry Cambuston, on May 23d, 1846. The claim was confirmed by the late Land Commission, and, on appeal, by the United States District Court. This Court reversed the decree of confirmation and remanded the case for further testimony, with reference to certain matters to be cleared up.

Rec., p. 11, 14 and 20th How., p. 59.

Further testimony was accordingly taken, and the claim was rejected, not because it was not genuine,

but on the ground that the grantee was an unnaturalized foreigner, and therefore, incapable of taking a grant.

Rec., p. 49.

Cambuston died, and his Executrix was made party claimant.

Rec., pp. 63, 64.

I.

The grant is undoubtedly genuine. It was made and delivered by Governor Pio Pico at the time of its date.

It is scarcely too much to say that all the substantial objections suggested by this Court, on remanding the case, were fairly met in the Court below. They are fully discussed in the opinion of the District Judge, (Rec. p. 49.) together with the testimony by which they are answered, and need not be repeated here.

An observation upon one or two of them may, perhaps, not be out of place.

It was said there was no proof that the grant was recorded. This was a plain mistake of fact. The entry of the recording is on the grant itself. *Queda tomado razon de este superior despacho en el libro respectiro.* MORENO.

Rec. p. 10.

This was the usual language, as will be seen by

reference to the records of any of these cases heretofore decided. The overlooking of this entry was one of the series of misfortunes that befel this claim, and helped to multiply the unfounded suspicions which led to its rejection.

This oversight is the more remarkable as the attention of Moreno, the Secretary of State, who made the entry, was especially called to it.

Rec. p. 27.

"Do you remember making that certificate, which "is in your own handwriting, on the grant, or do "you only know of it by now seeing it?"

Ans. "I remember taking this note on the book "because no document left the office without it," etc.

See also question 10, Rec. p. 25.

Where the Secretary is asked:

"It appears by a note over your signature on this "grant, and in your handwriting, that note of this "grant was taken in the proper book. Is that cer-"tificate true, and was a note so taken in the proper "book?"

Ans. "There was a book of *toma de razon* in "the office of the Secretary of State, in my charge, "and in which I took note of this grant, or title, "and would not have certified to it otherwise."

Rec. p. 25.

It will be observed that no witness impeaches this grant. On the contrary, the testimony all tends to establish its validity. This Court, on re-

manding the case, intimated that the grant was unknown, except to the claimant and an interested party, until 1850.

But the fresh proofs show it to have been quite well known, both to the new comers and the native population.

Rafael Pinto, a farmer, heard of it in 1846.

Rec. p. 16.

Gabriel De la Torre heard of about the middle of 1846. This witness is a native Californian, and a farmer.

Rec. p. 17.

Col. Jonathan Stevenson heard of it in April, 1844. (The printer has reversed the two last figures, making the date 1874.)

Rec. p. 41.

And in the following year the witness saw the grant.

Rec. p. 42.

The late Major General H. W. Halleck heard of it early in 1847, and that Cambuston proposed to sell portions of the tract to Americans and others.

Rec. p. 39.

Pearson B. Reading heard of it in 1846.

Rec. p. 46.

These witnesses being known to the District

Judge as gentlemen of the highest repute, their statements, doubtless, strengthened his convictions of the genuineness of the claim.

Besides this testimony, that concerning the claimant's occupation is important.

In 1847 Manuel Dias sold him fifty head of cattle, which Cambuston and his servant told witness were going to this land.

Rec. p. 3.

Victor Prudon was on it in October, 1846, and saw Cambuston in possession, with a house, cattle and laborers, and saw about 600 or 800 varas in cultivation, etc.

Rec. p. 4.

The record being totally destitute of any countervailing evidence, it would seem that nothing more could be wanting to establish the verity of this grant.

This Court rejected the testimony of M. Morenhaut, the French Vice-Consul, as he had an interest. But, on his re-examination, he showed he had divested himself of that interest, and he stated most positively that Combuston showed him the grant in 1847, or 1848. He heard of the grant, however, soon after his arrival in 1846. And he adds the significant statement :

"What I can say positively is, that I saw the "title long before there was any doubt made about "it, and before the lands were of any value."

Rec. p. 23.

In 1845 Monterey was the Capital of Upper California. To it Mr. Morenhaut was accredited as the Consul of the French Nation. He has been deemed worthy to hold the office ever since. As there is nothing to cast a doubt upon the sincerity of his statements, no reason is perceived why this Court should not accept them with the fullest confidence.

But the claimant went still further. The Governor and Secretary of State were brought forward, and they both testified to the genuineness of the grant, as made by themselves.

Rec. pp. 20–24.

This testimony is full and complete. No reason is, or can be, given for supposing them willing to lead the Court astray. Nor is there, in the record one word which is inconsistent with theirs.

The Governor says he "believes" the signature genuine. This caution is the subject of remark. But it must be remembered that he testified in Spanish, and we may not get the exact shade of his meaning. If a witness were asked in English, "do you recognize that to be your genuine signature?" and he should answer, "I do," he would express no more than his belief in its genuineness.

The difference between a witness falsely stating a signature is his, and a belief that it is, can hardly be worth discussing. The Governor's caution, it is submitted, commends his testimony to favorable consideration. He would be a rash witness who should swear positively to such a fact without some independent knowledge to fix it in his memory.

The absence of the book of entry of grants, made in 1846, has been the subject of more discussion than it deserves.

Land claimants do not keep the public archives. In these cases the United States is defendant, at whose mercy the plaintiff always is, for the production of public testimony. The claimant never had the custody of this book. According to the testimony of General Halleck, the archives in the Surveyor General's office were found by him in 1847 in the Custom House at Monterey, then used as a hospital.

The keeper of those archives, Mr. R. C. Hopkins, says, "I have never been able to find, in my office, any index, or *toma de razon*, referring to grants issued in the year 1846."

Rcc. p. 44.

If the public authorities have not been able to find this volume, the claimant is certainly not to be blamed for failing to produce it.

The discussion of this part of the case may be fitly closed by referring to two of its features, viz., the District Judge's words :

"The signatures of Pico and Moreno are undoubtedly genuine"—Rec, p. 49—and the French Consul's statement, that he heard of the claim soon after September, 1846, the time of his arrival.—

Rec. p. p. 22–23.

The grant was then about six month's old.

Our objection was, that the grant was a "pure donation."

Cambuston, it was charged, had rendered no equivalent for his grant.

But Alvarado proved he had rendered services as chief of the public schools and as public printer.

Rec. pp. 18, 19.

The witness heard that Cambuston obtained a tract of land in payment of these services, after having declined a tract offered by the witness.

In the opinion of the Court (Rec. pp. 52, 53) the Ex-Governor is treated somewhat harshly, where it said not to be true that Cambuston was employed as teacher and public printer from 1841 to 1846. The witness said:

"I cannot calculate the value of his services as printer, and I do not know, exactly, how long he discharged the duties of printer, whether it was up to 1846 or not. He was employed from 1841 to 1846, but there might have been intervals when there was nothing to do."

The fact that the French Minister complained that Cambuston had been driven away is no proof binding on Cambuston. Nothing shows that he instigated the complaint. Nor does it follow that even if he had been absent a week or a month he should have no pay for the years of his service. It is enough that he was employed. That he served without objection, and that one Governor offered him a grant which he obtained from another.

A suggestion, too, was made as to Pio Pico's powers as Governor. The manner in which he became Governor is fully explained.

Rec. p. 24.

And the District Judge says, p. 49: "The fact is known to the Court as part of the history of the county."

II.

There is no proof that the claimant was a French citizen when the grant was made to him.

To prove Cambuston a French citizen it is said he deposited his grant in the archives of the French Consulate at Monterey. The force of this argument is not perceived. Mr. Morenhaut certainly proves three things, as is said:

1st. He obtained a description of the French residents, on his arrival.

2d. He heard of Cambuston's grant.

3d. Cambuston deposited it in the Consulate.

Rec. p. 22.

But which of these facts establishes Cambuston's citizenship? Certainly neither of them. He deposited his grant in the American achives with Gen. Canby, in 1850, but that circumstance did not show him to have become an American citizen.

The second reason given is in these words:

"Col. Stevenson, also a witness for the claimant, "states that Cambuston spoke French and Spanish, "but no English.

Rec. p. 53.

This is certainly an extraordinary reason. Must a man speak English in order to be a Mexican?

or is it impossible for one to speak French without being a Frenchman? It is well known, on the contrary, that the French language is a part of the education of all cultivated Mexicans. The fact that Cambuston spoke the language of these two nations affords no aid in ascertaining to which of them he belonged.

The third reason given is, that Cambuston, having had a quarrel in a ball-room with the Prefect, Manuel Castro, the Mexican Minister and Gasqnet, then French Consul, discussed the subject and its consequences, in a correspondence, in which Cambuston was treated as a French citizen.

Rec. pp. 47, 48, 53.

This is, positively, all there is in the record touching the subject. There is no pretence that Cambuston ever spoke of himself as a French citizen, or ever did any act of any kind implying that he was. There is no proof that he ever saw or heard of the correspondence mentioned, or ever knew what version Castro put upon their ball-room quarrel, if they ever had one. There is no proof of French nativity, and none that he ever asked official or any other aid, in reference to any difficulty with the authorities or others. On the contrary, Mr. Hopkins, keeper of the archives, states:

"And affiant further says that it does not appear by the foregoing whether Cambuston did or did not apply to the Acting French Consul for nis protection and interference, or to the French Minister, at Mexico, in 1844."

Rec. p. 48.

In the case of H. Dalton, *vs.* The U. S., 22 How. p. 436, it was shown that Dalton had declared himself not to be a Mexican citizen.

But this Court disregarded the testimony and confirmed the grant, notwithstanding the Government's position that he was, confessedly, an alien, and could not take. Here, where no act or deed has been traced home to Cambuston, touching his citizenship, native or acquired, it is not deemed possible that this Court will cancel his grant, by reason of letters written by third persons to each other, without his knowledge, privity or consent.

III.

If he were shown to have been an alien, he was as competent to take as any candidate for a grant, native or naturalized. His title could be attacked only by denouncement or office-found.

If the Court should be satisfied that the fact of the alienage of Cambuston is sufficiently proven, then it is submitted that this fact does not constitute by the Mexican Laws, an absolute incapacity on his part to take lands in California.

There is nothing in the policy of the Spanish Law analagous to the doctrine of escheat. This harsh and rigorous rule owes its origin to the features of the feudal system, which never obtained any footing in Spain or any of her colonies. Notwithstanding the restricted and narrow policy of Spain, in all her relations with for-

eign powers, yet, in comparison with our Common Law system, so liberal were her laws, owing to the absence of any principle analagous to escheat, that aliens were permitted to acquire real estate in Spain or any of her colonies; to acquire citizenship by the mere fact of owning land, and to transmit the same by inheritance to foreign heirs.

Phillips v. *Rogers et. al.* 5, Martin 700–45.

After her independence, Mexico adopted the same liberal policy and even extended it. The first Colonization Law, that of the Emperor Iturbide, declares that, to facilitate the establishment of Foreigners, the government will distribute lands to them.

1 White's New Recopilacion, p 588.

This same policy was affirmed in the law of 1824, under which the Cambuston grant was made.

Article 1 of Law of 1824.
Rockwell, 451, and
Regulations of 28 Art. 1, *idem* p. 453.

On the 12th April, 1837, a law was enacted whereby foreign bondholders in payment of their bonds, were allowed to locate lands in Texas, Chihuahua, New Mexico and California.

Rockwell, 627–8.

The policy of Mexico relative to foreigners can

be seen by the following article taken from the Organic bases of June, 1843:

"Art. 13. A los estrangeros casados o se casa-
" ron con Mexicana o que fueren empleados en
" servicio y utilidad de la Republica, o en los estab-
" lecimentos industriales de ella o que adqueiren
" bienes raices en la misma, se les dara carta de
" naturaleza sin otro requisito, si la pidieren."

Leyes y decretos Mexicanos vol. 2, p. 64, Tit: 3.

(Adopted 12th June, 1843.)

Collection of Mexican laws and decrees by Mariano Galvan Rivera, and published by authority of the Supreme Government in 1854, to be found in the office of the Department of Justice.

TRANSLATION.

13. To Foreigners married, or who may be married with Mexicans, or who may be employed in the service or for the benefit of the Republic, or in its industrial establishments, or who may acquire real estate in it, letters of naturalization shall be given without any other requisite, if they ask for them.

It is thus evident that it was the settled policy of Mexico to grant her public domain to foreigners, and no variation is claimed from this rule until the issuing of the decree of Santa Anna, dated March 16th, 1842, whereby it is contended

that foreigners were forbidden to acquire lands in the Frontier Departments.

If this decree is to have this construction then it is evident that it is a repeal of the colonization law of 1824, which expressly authorized and invited foreigners to receive grants, and of the settled policy of Mexico. Now, this repeal should be distinctly expressed, as it only operates by implication, and Courts do not favor repeal by implications.

Smith's Commentaries, 879, § 757–8.

This decree, which is found in 1 Rockwell, p. 621, declares as it object an enlargement of the privileges of foreigners—who were not only permitted to receive lands by grant as heretofore, but were authorized to acquire them in any manner and by any title. Article Nine declares that these arrangements do not include the "Frontier Department," and land bordering upon other nations. But California was not within this category. Its settled portion was many hundreds of miles distant from the limits of any nation. But Santa Anna says that in regard to these "special laws of colonization will be enacted, without the power to foreigners to ever acquire property in them, without the express license of the Supreme Government."

It is submitted that this does not operate as a *present prohibition*, but only announces the intention of the Government *hereafter* to enact laws containing this prohibition; and until these special laws were enacted, the old Colonization Law

of 1824 was in force, which allowed foreigners to receive grants. It is further contended by us that this decree does not import a prohibition against the government itself granting lands to foreigners, as in this case, but only prevents foreigners acquiring real estate by purchase or other title from individuals.

Hence, it is submitted that no law can be shown containing an absolute prohibition against aliens acquiring by grant real estate in Mexico.

On the contrary, the law of June 12, 1843 quoted, plainly recognizes the capacity of aliens to take grants of land. This law was passed one year after the decree of Santa Anna. It was not quoted in the Court below. The claimant's counsel did not, apparently, deem it possible that the flimsy testimony offered touching Cambuston's citizenship could make any lodgment in the mind of the Court, or required any notice at their hands. Far from naturalization being necessary to obtain a grant, this law shows that the obtaining of a grant of land entitled the alien to be naturalized

Admitting that the Mexican Law forbade the acquisition of real estate by aliens in the Californias, nevertheless, it is contended, that a violation of that prohibition did not work a forfeiture of the estate for the Government as at common law, but that, upon a proceeding in the nature of a denunciation, the Government proceeded to sell the land, and, after deducting the expenses, to pay the proceeds over to the alien; or in other words, that an alien, although acquiring lands in violation of the law, took an estate, defeasible

upon a denunciation to the authorities, only so far as oblige him to sell the lands, but allowing him, in all events, to receive the proceeds to his own use.

In no case is forfeiture to the Government declared by any law. Thus, unde. the Colonization Law of 1824, 1 Rockwell, 451, while resident foreigners were particularly invited to obtain concessions, they could not continue to hold the land (§ 15, p. 453) if they left the Republic. There is no forfeiture to the Government declared, but it only provided that they shall not hold the lands, that is, shall not retain them.

The decree of Santa Anna of March 16, 1842, recognizes the same principle. While declaring that foreigners, residing in the Republic may acquire real estate, the 8th Article (1 Rockwell, p. 612) provides that if the resident foreigner absent himself for two years, or if the land pass, by inheritance or any other title, to a non-resident alien, then the land shall not be forfeited; but only shall be sold by the proprietor; or if not sold by him then, on denunciation, may be sold by the Government, which, after deducting one-tenth of the proceeds, as a reward to the informer, will pay the remainder over to the owner. And this is to be done even where a fraud is attempted by a resident alien holding lands in secret trust for a non-resident alien.

The Court cannot fail to recognize the absence of any principle analagous to escheat, as understood by us.

Even where there was positive fraud in the ac-

quisition of land by an alien, still the Mexican Government always recognized an interest as subsisting in the alien, only to be divested by a denunciation; and upon the denunciation being proved, the land did not escheat to the Government but was awarded to the informer. See section 11 of the Law concerning Passports, of 12th March, 1828, found in the "Ordenanza de Tierras y Aguas, p. 103."

The Court will perceive that even in this extreme case, the Mexican Government never contemplated a forfeiture to itself, but only a divestiture, upon inquisition, of the interest of the alien, and a transfer to a citizen.

Is not this condition identical with the condition contained in all these Mexican grants relative to occupation and to building a house, the breach of which is not regarded as a forfeiture unless denounced? In regard to a violation of that condition this Court said: (*Fremont* v. *U. S.* 17 How. p. 563) "Nobody proposed to settle on it or denounced the grant for a breach of the terms. And at the time the Mexican authorities were displaced by the American Arms, the right, which Alvarado had obtained by the original grant, remained vested in him, according to the laws and usages of Mexico, and remained so vested, when the domimion or control of the Government passed from Mexico to the United States."

After the lands were improperly acquired by the alien, in no event did the Government reserve any interest to itself; it only declared that

if one of its citizens wished to obtain the land of the alien for himself, it would adjudicate it to him, provided he denounced the alien and had regular proceedings instituted.

Whence then, according to the Laws of Mexico, can the power to reject this title by the United States be derived? In case of rejection, the title vests in and escheats to the United States, and yet the Laws quoted clearly establish the fact, that, in no event, could the Mexican Government resume the ownership of lands once granted.

Another result may be gathered from the preceding propositions, viz: that Cambuston took at all events, a defeasible interest, which interest the treaty of Gaudalupe Hidalgo found still remaining in him, and that the effect of that treaty was to enlarge his estate, and discharge the peculiar conditions of Mexican Law, and to vest in him an absolute and indefeasible title.

It cannot be denied that he had an interest, because, even by the rigorous rules of Common Law, where the doctrine of escheat prevailed, an alien could be grantee or devisee of land held as fee simple estate until office found.

> See Fairfax's Devisee *vs.* Hunter's Lessee, 7 Cranch 603, where the whole subject is elaborately treated and decided.

But the Mexican Laws already quoted, show that the mode of divesting the alien was by denunciation; and hence it follows, that his interest existed until divested by legal proceedings. Com-

buston also had possession of the lands, so that he had not only his defeasible right under the grant, but a possessory title also.

It is contended that by the law of nations and the operation of the Treaty of Gaudalupe Hidalgo, on the acquisition of California by us, the estate of Cambuston became discharged of the conditions imposed on it by Mexican Law, and remained absolute, for the reason that the United States have no right to acquire lands by escheat.

The case in 7th Cranch clearly shows that the title of the alien is good until office found. No office has been found in this case unless it be contended that these proceedings involve such an inquisition. Then the title of the United States must accrue by these proceedings, but the United States have no ability to acquire lands by escheat, this right being one of the *jura regalia* belonging to the immediate sovereign, viz: the State of California.

This doctrine has been too frequently decided by this Court to need any further illustration.

See Pollard *vs.* Hagan, 3 How. 212.

TO RECAPITULATE.

1st. The grant is genuine. It was duly made by the constituted authorities of Upper California. The grantee took possession, built a house, and

other improvements, and stocked the farm in the usual manner, thus establishing an equitable claim to the land, even if his title were defective in form.

2d. There is no evidence that the grantee was a foreigner.

3d. If he had been, the liberal policy of the colonization laws of Mexico enabled him to take lands from the Government.

4th. If, being a foreigner, he had taken lands in violation of the laws, nevertheless his title could not be divested except by process of denunciation, or office found.

5th. And then, the land must be sold, and nine-tenths of the price restored to him.

But the grant is discharged of this condition as it is one opposed to the policy of our laws.

EDMOND L. GOOLD,

Counsel for Appellant.

NOTE.—It is believed that this is the last Mexican grant that can be brought here for confirmation. A few of the native population omitted to present their grants to the Land Commission. Of course, these are forfeited. The 850 grants originally presented are substantially disposed of.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CAMBUSTON, EXECUTRIX, &C.
vs.
THE UNITED STATES.
No. 88.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CAMBUSTON, EXECUTRIX, &C.
vs.
THE UNITED STATES. } No. 88.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

This is a petition for the confirmation of a Mexican grant of land in California, and was before this court at December term, 1859, being reported in 20th How., p. 59. The decree in the lower court, in favor of the petitioner, having then been reversed by this court, upon further proceedings below, his honor Judge Hoffman, on the 12th of November, 1859, gave a decree rejecting the claim. (Record, p. 60.)

No motion was made, or other step looking to a new trial or rehearing taken, during the term at which the above decree was given, (which ended on the 1st Mon-

day of December, 1859, Record, p. 62,) but after the close of the term a petition for rehearing was filed by one Mizner, "a party in interest," and some days afterwards (March 13, 1860) it was stipulated (Record, p. 62) between the counsel for the claimant and the acting United States district attorney that if such petition [motion] were *then* competent, "it shall not be prejudiced by delay until the return of the Hon. Ogden Hoffman."

The next step in the case was taken on the 2d day of April, 1875, when the present appellant petitioned (Record, p. 62, bottom) to be made a party to the original petition, and thereupon filed an affidavit (Record, p. 65) showing that the original petitioner (who was her husband) had died in January, 1869; that in May, 1869, she had been qualified as executrix of his estate; that after Judge Hoffman's decision her husband had become *very despondent and sad*, and about one year thereafter *began to stimulate himself so much that he forgot his duties; and went on losing his mind for eight years*, and at last died in a mad-house; and that she had been until recently before *without money or friends to make the case go forward.*

Having thereupon (April 3, 1875) been admitted a party claimant, the present appellant, "pursuant to the stipulation heretofore filed," &c., moved for a new trial and a reversal of the decree of rejection. (Record folio 196.) This having, on the same day, been denied, on motion of claimant's attorney, "an appeal from the final decree and from the order denying claimant's motion for a new trial" was allowed.

It appears, for the following reasons, that this appeal ought to be dismissed:

I. The motion for new trial, whether treated as such

or as a petition for a rehearing, was not made during the term at which the decree was given. (See Rules in equity, 88.)

Relief can be given in neither form after the judgment or decree is beyond the power of the court, *i. e.* after the close of the term.

II. The motion (made in 1860,) if aptly made, had *fallen* before the time (April, 1875) at which it was sought to make avail of it. Motions must be ended at the term when made, or *expressly* continued, and the stipulation above cited, viz, that the motion, supposing it then competent, *shall not be prejudiced by delay until the return of Judge Hoffman*, could mean at most only *until the next term of his court.* It is unreasonable to rely upon it as keeping the motion pending for fifteen years, long after the stipulator had ceased to be ("acting") United States attorney, no notice thereof to any one of the many successors of such stipulator being either presumable or suggested.

III. The appeal allowed is "from the *final decree* and from *the order* denying claimant's motion for a new trial." But no appeal lay (*a*) from the final decree, for that had been given *more than fifteen years* previously, or (*b*) from the motion for a new trial, (or any petition for a rehearing,) inasmuch as the granting of that is, in itself, a mere matter of discretion, and a party's right to an *appeal* after that has been denied must depend upon the state of the decree to which it relates. If for any reason one cannot have a writ of error or appeal directly from a judgment or decree, he cannot have it indirectly, by taking such proceedings upon a motion for a new trial or a petition to rehear.

IV. It seems that after the death of Cambuston, the

proper party to revive these proceedings (which relate to land) was his heir, not his executrix. The petition states a case of an *executed grant* by the Mexican government, and asks for its confirmation.

If this court shall think this appeal is maintainable, I beg leave to adopt the argument contained in the Opinion of the learned court below, (Record, pp. 49–59,) and to rely entirely upon it for a justification of the decree of rejection.

S. F. PHILLIPS,
Solicitor General.